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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED OCTOBER 7, 1935.

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VOL. I

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[fol. 1] [File endorsement omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION

In Equity. No. 245

ST. JOSEPH STOCK YARDS COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA and SECRETARY OF AGRICULTURE, Defendants

PETITION—Filed May 15, 1934

To the Honorable, the Judges of the District Court of the United States for the Western District of Missouri, St. Joseph Division:

I

Your petitioner, St. Joseph Stock Yards Company, brings this petition in equity against the United States of America and the Secretary of Agriculture of the United States (hereinafter called the Secretary), for the purpose of suspending, enjoining, setting aside, and annulling a certain Order issued by H. A. Wallace, Secretary of Agriculture, entered on the 4th day of May, 1934, in a proceeding before said Secretary, conducted by the Bureau of Animal Industry of the Department of Agriculture of the United States, entitled "In Re Secretary of Agriculture v. St. [fol. 3] Joseph Stock Yards Company, Docket No. 298."

For its cause of action petitioner alleges and shows:

II

The St. Joseph Stock Yards Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with principal office at South St. Joseph, Missouri, where it owns, maintains and operates a stockyards, which has been designated as a public stockyards by the Secretary under the provisions of the act of Congress known and cited as "Packers and Stockyards Act, 1921" (U. S. C. A. tit. 7, § 201-229).

III

The United States of America is made defendant in this suit pursuant to said Packers and Stockyards Act, 1921; the Commerce Court Act (36 Stat. L. 539), approved June 18, 1910; and the District Court Jurisdiction Act, being part of the Urgent Deficiency Appropriations Act (38 Stat. L. 219), approved October 22, 1913, and amendments thereof, said acts also appearing in U. S. C. A. tit. 28, §§ 41 (27), 41 (28), 45, 46, 48, 214 and 380. The Secretary is made a defendant in pursuance of the same acts and particularly because the order herein complained of was made by said H. A. Wallace, Secretary of Agriculture.

IV

That on, to-wit, October 9, 1929, R. W. Dunlap, then Acting Secretary of Agriculture of the United States of America, issued an order of inquiry in a proceeding known as "In re Secretary of Agriculture v. St. Joseph Stock Yards Company, Docket No. 298" (hereinafter referred to as [fol. 4] Docket No. 298); that after a hearing, an order was entered by said R. W. Dunlap in said Docket No. 298, dated July 20, 1931, reducing the rates and charges of petitioner; that, on to-wit, August 7, 1931, petitioner filed a petition in the District Court of the United States for the Western District of Missouri, St. Joseph Division, seeking to permanently enjoin and set aside said order of the said Acting Secretary of Agriculture, which injunction proceeding was entitled "St. Joseph Stock Yards Company v. United States of America and Secretary of Agriculture, In Equity No. 204" (hereinafter referred to as In Equity No. 204); that, as more fully appears in said In Equity No. 204, answer was filed, evidence received, oral arguments held and printed briefs filed, and in due course said United States District Court, on June 6, 1932, permanently enjoined the enforcement of said order (58 Fed. (2d) 290); that on, to-wit, July 19, 1932, Arthur M. Hyde, then Secretary of Agriculture, of the United States of America, issued the following order reopening said Docket No. 298 and setting it down for further hearing:

(Caption Omitted.)

"This docket was instituted by an order of inquiry and notice of hearing issued by the Acting Secretary of Agri-

culture on October 9, 1929, a copy of which was duly served upon respondent. Pursuant thereto a hearing was held beginning on December 2, and ending on December 17, 1929. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary on May 13th and 14th, 1930, and respondent submitted a brief.

On February 11, 1931, respondent filed a petition in this proceeding alleging certain general economic changes and, in detail, the particular effect of such changes upon respondent's business. The petition prayed that an order [fol. 5] be entered reopening the proceeding and setting it down for further hearing on the matters stated in the petition.

On July 20, 1931, the Secretary of Agriculture issued an order denying respondent's petition for rehearing; prescribing the schedule of maximum rates and charges and ordering that respondent make no charge for any stockyard service, rendered by it, in excess of the charge prescribed therefor in said schedule.

Thereupon, respondent filed in the District Court for the Western District of Missouri a bill alleging, among other things, that the order of the Acting Secretary, aforesaid, in denying respondent a rehearing and in prescribing a schedule of maximum rates based on the record made at the hearing in December, 1929, and without consideration of the changes alleged in respondent's petition to have occurred since the hearing, denied to respondent a full hearing and, therefore, constituted a taking of respondent's property without due process of law. The bill prayed injunctions both temporary and permanent against the enforcement of the aforesaid order of the Acting Secretary.

A temporary injunction was issued in accordance with the prayer of the bill and, after a hearing at which the Court received evidence in support of the allegations respecting changed economic conditions, the injunction was made permanent, it being the opinion of the Court that the Acting Secretary erred in denying the prayer of respondent's petition for a rehearing. The Court based its opinion in this regard upon the decision of the Supreme Court of the United States in the case of Atchison, Topeka and Santa Fe Railway Company v. United States, 284 U. S. 248, decided January 4, 1932.

In view of the above mentioned decisions, the Secretary of Agriculture is of opinion that it is his duty, under the law, to reopen this docket and hold a rehearing to the end that all parties may be given opportunity to present such evidence of changes, both general and particular, which have occurred since the year 1929 as may be material to the issues raised by the order of inquiry herein; and also the end that all parties may have opportunity to present such [fol. 6] other evidence as may be material to said issues; and further to the end that a general inquiry may be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all tariffs or schedules of rates and charges filed by respondent and now in effect for stockyard services rendered by it at the St. Joseph Stockyards, South St. Joseph, Missouri, Wherefore,

It is ordered that the aforesaid order of the Acting Secretary of Agriculture entered in this docket on July 20, 1931, be and the same hereby is vacated and set aside; and that this docket be and the same hereby is reopened.

It is further ordered that a supplemental hearing herein be held before an examiner designated by the Secretary of Agriculture, in the Federal Building at St. Joseph, Mo., beginning on the 28th day of November, 1932, at 10:00 A. M., or as soon thereafter as the parties may be heard and continuing until such hearing is completed, which said hearing shall be also a general inquiry into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent at the St. Joseph Stockyards, South St. Joseph, Missouri; that at such hearing all parties shall have the right to introduce further evidence competent and material to the issues raised by the aforesaid order of inquiry herein and shall also have the right to introduce evidence competent and material to the issue of the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent as aforesaid; and that the record heretofore made in this docket, together with all the

evidence introduced at said hearing, shall constitute the record before the Secretary of Agriculture in this proceeding.

[fol. 7] In witness whereof, The Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, this 19th day of July, 1932.

Arthur M. Hyde, Secretary of Agriculture. (Official Seal.)"

V

That said reopened Docket No. 298 was heard by an Examiner, an employe of the United States Department of Agriculture, acting under and upon the purported authority of said Secretary, at St. Joseph, Missouri, January 10 to February 16, 1933; that subsequently, on January 6, 1934, a proposed findings, conclusions and order, prepared by counsel for the Government, was forwarded by R. G. Tugwell, Acting Secretary of Agriculture, to petitioner, with a statement that exceptions, if any, be filed by petitioner on or before February 2, 1934; that on, to wit, February 2, 1934, petitioner filed with the Secretary of Agriculture exceptions to said proposed findings, conclusions and order and, on February 26, 1934, said case was orally argued before H. A. Wallace, Secretary of Agriculture, and on the same date petitioner filed with said Secretary a memorandum in support of petitioner's said exceptions; and that on May 4, 1934, said H. A. Wallace, Secretary of Agriculture, issued certain "Findings, Conclusions and Order", which Order is hereby sought to be suspended, enjoined, set aside and annulled; that said "Findings, Conclusions and Order" are attached hereto, marked "Exhibit A", and made a part of this petition in the same manner and to the same extent as if set forth in full herein.

[fol. 8] VI

That the authority of said Secretary, and of his employes, with respect to the regulation of the rates and charges of public stockyards and with respect to said Order of May 4, 1934, is solely contained in, and is restricted to, the provisions of said Packers and Stockyards Act, 1921 (U. S. C. A. tit. 7, § 201-229), and particularly to Title III thereof.

VII

That, as more fully and specifically appears in said Findings, Conclusions and Order, hereto attached and marked "Exhibit A," said Secretary found and concluded that the rates and charges published by petitioner and duly filed in tariff form with the Secretary, as provided in said Packers and Stockyards Act, 1921, are unreasonable and unjustly discriminatory, and said Secretary by said Order prescribed lower rates and charges to be filed in tariff form with said Secretary and to be charged by petitioner for its services as a public stockyards, within thirty days from the date of said Order, said lower rates and charges being required to be published by petitioner in a tariff to be filed with said Secretary at least 10 days prior to the thirtieth day from the date of said order. That under the requirements of said order said rates must be filed by petitioner with said Secretary not later than May 24, 1934, and become effective June 4, 1934. That, if petitioner fails to comply with the terms and conditions of said Order within the time prescribed in said Order, petitioner will be subjected to heavy and severe fines and penalties as provided in said Packers and Stockyards Act, 1921; and, in addition thereto, petitioner will be subjected to numerous and vexatious suits for [fol. 9] recovery of reparation by shippers of livestock to the livestock market conducted by petitioner at South St. Joseph, Missouri.

VIII

That said rates so prescribed by said Secretary in said Order are based upon findings in said Findings, Conclusions and Order, which are not supported by any evidence of record, which are contrary to the evidence of record, and contrary to the weight of the evidence taken in said proceeding before said Examiner. That said rates, if applied in the future, will deprive petitioner of its property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and in violation of the law of the land.

IX

That, more specifically, said Findings, Conclusions and Order is contrary to law, confiscatory of petitioner's property, and deprives petitioner of its property without due

process of law, in violation of the Fifth Amendment to the Constitution of the United States, and is, therefore, void and of no effect, for the following reasons, to wit:

(A) That said Findings, Conclusions and Order, in so far as it determines that the rates and charges published and assessed by petitioner for its services as a public stockyards are unreasonable, is based solely upon a pretended valuation made by said Secretary, without authority of law, as a result of which said Secretary, without authority of law, has determined the value of the property of petitioner, used and useful for stockyard purposes, and has fixed a rate of return upon the pretended value so found; that said Sec- [fol. 10] retary has no authority, by statute or otherwise, to determine the value of the property, owned and used by your petitioner in the operation of said public stockyards, for rate-making purposes, and to prescribe a reasonable rate of return thereon; and that, as a consequence, said Order, based solely upon said unlawful and pretended valuation, is void, because said Secretary is without authority of law to make a valuation of petitioner's said property, or to determine what would constitute a fair return to petitioner upon the value of said property, or to determine that petitioner's rates and charges are unreasonable merely because they exceed a specified percentage of said pretended and unlawful valuation.

(B) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary determined that the total amount of land used by petitioner in performing stockyard services was and is 101.248 acres; that the real and true amount of land used and useful by petitioner in performing stockyard services is not less than 189.556 acres; that said finding made by said Secretary is beyond the statutory power of said Secretary; is contrary to provisions of said Packers and Stockyards Act, 1921; is contrary to the evidence of record; is wholly unsupported by any evidence of record; is arbitrary; is confiscatory of petitioner's property; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(C) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary fixed the

value of the total amount of land found by him to be used and useful by petitioner in performing stockyards services at $647,547.84; that the real and true value of said land is [fol. 11] not less than $935,490.76; that the finding made by said Secretary is beyond the statutory authority of said Secretary; is based upon unlawful methods of land valuation; is wholly unsupported by any evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory of petitioner's property; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(D) That in the performance of its stockyard services, petitioner requires 189.556 acres of land; that in said unlawful and pretended valuation of petitioner's stockyards property said Secretary deducted from said land 88.308 acres; that said Secretary, in connection therewith, deducted from the value of petitioner's property the value placed upon said 88.308 acres by the land appraisers employed by said Secretary as well as by the appraisers employed by petitioner, thereby depriving petitioner of a lawful property value for the purpose of making rates of $356,263.33; that said Secretary has no authority of law to determine the amount of land to be used by petitioner in connection with the performance of its stockyard services; or to determine the business activities in which petitioner may lawfully engage in connection with its operation of its public stockyards; or to determine the amount of land which may reasonably be held by petitioner for expansion purposes; or to determine the amount of land which may be used as a basis for making the rates charged by petitioner; that said finding made by said Secretary with respect to the land used and useful is an abuse of power by said Secretary; is not authorized by any statute of the United States; is unsupported by evidence; is contrary to the evi- [fol. 12] dence; is contrary to the weight of the evidence; is arbitrary; is confiscatory of petitioner's property; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(E) That in said Findings, Conclusions and Order of said Secretary, the amount found in said unlawful and pre-

tended valuation as the present cost of reproduction less depreciation of certain portions of petitioner's property, other than land, which said Secretary classified as used and useful, is unlawful and void; because said Secretary fixed the depreciated value of said property at $2,039,616, whereas the real and true depreciated value of said property is not less than $2,900,113, thereby depriving petitioner of its property in the sum of $860,497; and because said Secretary discarded and disallowed from the value of petitioner's property for rate-making purposes certain property held by said Secretary to be not used and useful for stockyard services, such as a building used for a stockyards hotel, a building wherein a harness shop is operated and a stockyard journal is published, a garage, and various and sundry other items of petitioner's property used by it in connection with the operation of its public stockyards, the cost of reproduction less depreciation of which excluded property is not less than $231,151; and that said Findings, Conclusions and Order of said Secretary with respect to the cost of reproduction new, less depreciation, of petitioner's stockyards property is unsupported by the evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(F) That in said unlawful and pretended valuation of [fol. 13] petitioner's property, said Secretary found that no allowance should be made for what are generally known as pre-organization expenses and cost of financing, although the evidence in said hearing showed the reasonable amount of pre-organization expenses to be at least $57,000 and the reasonable cost of financing to be at least $137,150; that said finding is unsupported by the evidence of record; is contrary to the evidence of record; is contrary to the weight of evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(G) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary found that no allowance should be made for going concern value of

petitioner's property; that no evidence with respect to the going concern value of petitioner's property was offered in said hearing on behalf of said Secretary; that the only evidence offered in said hearing with respect to the going concern value of petitioner's stockyards property was that offered on behalf of petitioner; that the undisputed evidence of record in said hearing establishes that petitioner's stockyards property has a going concern value of not less than $294,000; that said evidence on behalf of petitioner has been unlawfully disregarded by said Secretary in his said Findings, Conclusions and Order, thereby depriving petitioner of its property in the sum of $294,000; that the action of said Secretary in depriving petitioner of its going concern value in the sum of $294,000 is unsupported by any evidence of record; is contrary to the only evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 14] (H) That, with respect to the amount to be set aside annually as a depreciation reserve in connection with the operation of petitioner's public stockyards property, the evidence of record in said proceeding shows that, upon methods of depreciation universally followed throughout the United States in both regulated and unregulated businesses, the amount which should be allowed annually as a part of petitioner's operating expenses for depreciation of its property is not less than $100,000; that said Secretary has in lieu thereof allowed to petitioner only $41,500; that said Secretary is without statutory authority to determine the manner in which an annual depreciation reserve shall be set aside as a part of the operating expenses of petitioner nor the amount thereof; that said unlawful finding of said Secretary would result in depriving petitioner of its lawful income in an amount not less than $58,500 per annum; that the findings in connection therewith contained in paragraphs 173-177, inc., of said Findings, Conclusion and Order are not supported by or based upon any evidence of record in said hearing; that the attempted determination by said Secretary of the amount to be allowed to petitioner annually as a depreciation reserve and for repairs, maintenance, etc., is without authority of law in the Packers and Stockyards Act, 1921, which is the only law of the United States

conferring any authority upon said Secretary with respect to the regulation of petitioner's charges; that said Findings, Conclusion and Order with respect to the annual amount of depreciation reserve and for maintenance, etc., is unsupported by any evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property in the amount of $58,500 per annum, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 15] (I) That in said Findings, Conclusions and Order, and particularly in paragraph 181 thereof, said Secretary has revised, restated and reduced the expenses properly incurred by petitioner in the operation of its business as a public stockyards by amounts not less than $439,438.22 for the year 1931 and $327,107.58 for the year 1932, and in even greater amounts for the years 1927-1930, inclusive; and that, instead of the amounts stated as petitioner's operating expenses in said paragraph, the real and true expenses incurred by petitioner in the operation of its public stockyards in the year 1931 were $743,203.94 and in the year 1932 $616,646.91; and that the operating expenses so incurred by petitioner were greater than said amounts in the years 1927-1930, inclusive; that said erroneous reduction was accomplished by omitting some of the expenses actually incurred by petitioner and by eliminating others; that said action by said Secretary, in unlawfully and improperly revising, restating and reducing the actual and true operating expenses of petitioner for the years 1927-1932, inclusive, results in the statement of conclusions by the Secretary as to the reasonableness of petitioner's rates and charges which, if permitted to become effective, would unlawfully deprive petitioner of an amount not less than $100,000 per annum necessary to meet its reasonable operating expenses; that in determining that petitioner's rates and charges are unreasonable, said Secretary has erroneously taken into consideration the result of petitioner's operations of its public stockyards over a period of years, namely, 1927-1932, inclusive, during which the gross volume of business transacted by petitioner, both as to yardage and feed sales, and in other respects, was much greater than that transacted during the year 1932 or the amount which can reasonably be expected to be transacted in the future; and that

[fol. 16] any conclusion based upon the average earnings of petitioner during said period of years would result in the confiscation of petitioner's property from and after the effective date of said order; that, although said Secretary has based his conclusion as to the unreasonableness of petitioner's rates upon consideration of earnings during a period of years during which petitioner's earnings were much greater than they were in the year 1932 or can reasonably be expected to be in the future, nevertheless, the value determined for petitioner's property by said Secretary did not represent an average value for said years, but as stated, in said Findings, Conclusions and Order, represented a spot value as of August 1, 1932; that, based upon cost of reproduction less depreciation as determined by the Secretary, said spot value as of August 1, 1932, represented a value much lower than the average real and true value of petitioner's property during said years 1927-1932, inclusive; that the Secretary found in said Findings, Conclusions and Order that the cost of reproduction less depreciation of petitioner's structures, using spot prices as of August 1, 1932, was $2,039,616, whereas the average fair value of petitioner's structures during said years 1927-1932, inclusive, was not less than $3,204,122; that the action of the Secretary recited in this paragraph is unsupported by the evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; exceeds the power of said Secretary; is confiscatory of the property of petitioner; is without due process of law; and deprives petitioner of its property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(J) That in said Findings, Conclusions and Order of said Secretary, said Secretary has determined that a fair rate of return upon the fair value of the property used by peti- [fol. 17] tioner as a public stockyards shall be 7 per cent. per annum, and has undertaken to fix rates to be charged by petitioner upon said basis; that said Secretary is without authority of law, statutory or otherwise, to determine what constitutes a fair rate of return upon the fair value of the property used by petitioner as a public stockyards; that said Secretary is without authority of law, statutory or otherwise, to determine that petitioner's rates and charges are unreasonable merely because they exceed the 7

per cent. annually upon the unlawful and pretended valuation of said property by said Secretary; that no evidence with respect to said rate of return was offered at said hearing on behalf of said Secretary upon which said Secretary could lawfully reach a conclusion as to a proper and lawful rate of return upon the fair value of the property used by petitioner as a public stockyards; that the evidence on behalf of petitioner at said hearing established that the fair rate of return upon the fair value of petitioner's said property under the circumstances and conditions existing in and about St. Joseph and South St. Joseph, Missouri, and the conditions affecting the business conducted by petitioner, and necessary to enable petitioner to maintain and support its credit and enable it to obtain the money necessary for the discharge of its duties, would be much in excess of 7 per cent per annum; that said finding of said Secretary is unsupported by the evidence of record; is contrary to the evidence of record; is arbitrary; is confiscatory of petitioner's property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(K) That the real and true value of the property owned and used by petitioner in the performance of its stockyard services is not less than $4,500,000; that the amount allowed for net operating income by said Secretary in said Find-
[fol. 18] ings, Conclusions and Order is $192,010 per annum, which would result in a return to petitioner of approximately 4.27 per cent upon the fair value of petitioner's property so used as a public stockyards; that petitioner's property would thereby be confiscated, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, if said order of said Secretary is permitted to be made effective.

(L) That, as appears in paragraphs 196, 201, 206, 207 and 208 of said Findings, Conclusions and Order, the rates and charges prescribed by the Secretary are based upon the assumption that petitioner will change its practice in respect to charges made to a certain class of patrons commonly known as traders or speculators; that the Secretary does not make any finding that the present practices of petitioner are either unreasonable or unjustly discriminatory; that the Secretary has ordered the rates and charges

of petitioner reduced in part on the assumption that it will receive additional revenue from a new source; that the Secretary, in said Findings, Conclusions and Order, has charged against petitioner's income a toll which it does not exact, and the Secretary has no power to require petitioner to exact said charge; that there is no evidence of record in said hearing upon which said Secretary could determine the amount of yardage charges, if any, which should be charged against said traders or speculators, or how much said charges would yield to petitioner; that basing the reduction of petitioner's rates in part upon additional revenue to be derived from traders and speculators is in abuse of power and in excess of the statutory power of the said Secretary; is arbitrary; and is confiscatory of petitioner's property, without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 19] (M) That in paragraphs 197, 206, 207 and 208 of said Findings, Conclusions and Order of said Secretary (as more fully set forth in "Exhibit A" attached hereto) a finding is made that the rates and charges now in effect for feed lot yardage are unjustly discriminatory, because the shippers of livestock who consign their animals to commission men are charged more by petitioner for the use of its facilities in handling such livestock for a shorter period of time than are those who use the feed lots for a longer period of time; that said finding is without any support whatsoever in the evidence of record in said hearing before said Secretary; that there is no evidence of record in said hearing upon which said Secretary could determine the amount of yardage charges, if any, which should be charged for the use of the fe-d lots; that said finding of the Secretary is contrary to and ignores the undisputed evidence that the feed lot facilities are used in connection with the general facilities of petitioner and produce a part of the general yardage income, and that the two services are not rendered under substantially similar circumstances and conditions; that although said Secretary made said finding of unjust discrimination, the order permits petitioner to continue to impose the same charge for feed lot yardage; that said Secretary's sole power, as provided in said Packers and Stockyards Act, 1921, in cases of unjust discrimination, is to issue an order to cease and desist from said unjust discrim-

ination; that all unjust discriminations are forbidden by said act; and that, if the so-called concession to users of the feed lots is one which petitioner may continue, if it desires to do so, as authorized by said Secretary, said practice cannot constitute an unjust discrimination within the meaning of said act; that said findings, herein referred to, are void and of no effect, because made without a full hearing with respect thereto, as required by law; because unsup- [fol. 20] ported by any evidence of record, and in violation of the Packers and Stockyards Act, 1921.

(N) That in paragraph 207 of said Findings, Conclusion and Order, said Secretary prescribes purported maximum reasonable rates and charges for various services rendered by petitioner in its operation of its stockyards, said rates and charges varying in amounts according to the particular type of service rendered; that said rates and charges constitute in some instances reductions in varying percentages from the rates and charges now made by petitioner, in other instances are the same as the rates and charges now made by petitioner, and in other instances exceed the charges now made by petitioner; that said finding prescribing said purported maximum reasonable rates and charges for the services rendered by the petitioner, and the varying percentages of reduction and increase, are unsupported by the evidence of record in said hearing; are contrary to the evidence of record; are contrary to the weight of evidence; are arbitrary; and are confiscatory of petitioner's property, without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

(O) That on February 2, 1934, petitioner filed with the Secretary, in the proceedings then pending before him under said Docket No. 298, a petition entitled "Petition for Re-Opening and Further Hearing." Said petition, omitting the caption, is in words and figures as follows, to-wit:

"Comes now respondent in the above entitled proceeding, by Ross Dean Rynder and William N. Strack, its attorneys, and respectfully petitions the Secretary of Agriculture that the above entitled proceeding be reopened for further hearing and taking of testimony, for the following reasons:

That the hearing in this proceeding was closed on February 16, 1933; that the inventory and appraisal made by [fol. 21] the Government's engineers and respondent's en-

gineers represented the cost of reproduction new of respondent's structures as of August 1, 1932, and that the financial results of the operation of its stock yards by respondent are shown in the present record only up to the end of the calendar year 1932; that since said dates there have been such substantial changes in circumstances and conditions which affect the value of respondent's property, its income, the probable receipts of live stock and expenses at its yards, that said record no longer represents fairly the present conditions affecting respondent's operations, nor does it afford a proper basis for an estimate of respondent's income and expenditures during the period within which an order such as is proposed herein would be in force. Said changes have been of such an extraordinary and unusual character that they could not possibly have been foreseen or predicted during the time when the hearing in this case was being held. These unusual circumstances and conditions are more specifically described as follows:

I

On May 12, 1933, after the close of the hearing in this case, there was enacted by Congress what is known as the Agricultural Adjustment Act, U. S. C. A., tit. 7, sec. 601 to 619; that said act gave the Secretary of Agriculture new and extraordinary powers in connection with the production and sale of various agricultural products, including live stock; that by sec. 609 of said act, the Secretary of Agriculture was authorized to levy processing taxes upon hogs and upon certain other agricultural commodities; that since said act was passed the Secretary of Agriculture has levied processing taxes in connection with the purchase of hogs for slaughter and has announced a program, the avowed purpose of which is, by the use of said processing taxes and otherwise, to reduce the number of hogs to be marketed during the future; that it has been definitely announced by the Secretary of Agriculture that by means of the disposition to be made of the processing tax, through hog and corn reduction programs, and other extraordinary [fol. 22] powers granted to him in said act, the Government expects to bring about a reduction of at least 25 per cent in the number of hogs which will be marketed in the future. Assuming that the Government will be successful in the program which it has adopted, it is fair to assume that the

number of hogs brought to respondent's stock yards in the future will be reduced by at least 25 per cent per annum below the level which might be expected, based upon past experience. Under the provisions of sec. 615 of said act, and also by means of a specific amendment to said act, various efforts are being made at the present time to have included as basic commodities, under said act, cattle and sheep which would thereupon become subject to the powers of the Secretary to take such action as he may consider necessary to provide for a reduction in the number of such animals to be marketed. It is reasonable to suppose that this would effect further reductions in the amount of live stock which would be received at respondent's stock yards. Respondent avers that it will be denied the full hearing contemplated by law, to its damage, if it is not permitted to offer in evidence all of the facts now available in support of the allegations hereinabove set forth.

II

On June 16, 1933, after the close of the hearing in this proceeding, there was enacted by Congress what is known as the National Industrial Recovery Act, U. S. C. A., tit. 15, sec. 701 to 712. Under the provisions of said act, the President was given new and extraordinary powers to do many things for the purpose of industrial recovery. Under the provisions of said act respondent, together with other public stock yards, was required to sign a code, effective in August, 1933, which substantially increased the amount of compensation paid to its employees, and which increased its operating expenses. As a further outgrowth of the labor and economic conditions existing at the present time, respondent was required to increase wages paid to its employees by a further increase of 10 per cent, effective in December, 1933; that on or about January 15, 1934, a de- [fol. 23] mand was served upon respondent by an organization of its employees, demanding still further increases in wages and reductions in working hours, all of which will substantially affect and increase respondent's operating expenses in the future; that the full effect of the facts stated in this section of the petition upon respondent's annual operating expenses would be an increase of at least $53,400.00 over and above its necessary operating expenses as

indicated at the close of the hearing in this proceeding. Respondent avers that, if it is not permitted to establish of record the facts alleged in this section of this petition, it will be deprived, to its damage, of the full hearing contemplated by law.

III

By action of the President of the United States, as well as by an act of Congress, approved January 30, 1934, the currency of the United States is no longer upon the gold standard and the President has been authorized by said act to reduce the gold content of the dollar to not less than 50 per cent nor more than 60 per cent of its value in gold at the time of the close of the eharing in this proceeding; that the avowed purpose of the Government in this respect is to bring about an increase in commodity prices, and there must necessarily follow also necessary increases in wages; that the cost of reproduction new and less depreciation of respondent's structures, as testified to by the engineers of the Government and respondent in this proceeding, were based upon their studies made prior to such devaluation of the dollar and are much less than the fair and true value expressed in dollars of respondent's structures at the present time. In addition thereto, respondent's yardage rates are now stated in cents per head of live stock and its feed rates in cents per unit of measure, and it is so proposed to state respondent's charges in the proposed report in this proceeding. As a result of the devaluation of the dollar, it will necessarily follow that the fair value of respondent's property, both land and structures, as expressed in dollars, will, for a reasonable period in the future, be much greater than that determined by the engineers and [fol. 24] appraisers who testified in this case, and respondent's operating expenses will necessarily be much greater because a greater number of dollars will be necessary in order to pay for the materials and obtain the services necessary to the operation of respondent's stock yards. In this connection, respondent avers that the cost of reproduction of its property has already increased 25 per cent since August 1, 1932, the date of the appraisals used in this proceeding, due to increase in material and labor prices and construction costs. Respondents aver that, if it is not permitted to establish of record the facts alleged in this section

of this petition, it will be deprived, to its damage, of the full hearing contemplated by law.

IV

Since the close of the hearing in this proceeding respondent's books and records indicate the full and complete results of the income and expenses of its operations for the calendar year 1933; that for the year 1933 respondent's gross income, excluding yardage on Government pigs and piggy sows, a nonrecurring item, was only $614,332.33, excluding also income classified as outside income in the proposed report herein. Deducting from this amount the $442,200.00, recommended in the proposed report herein as reasonable operating expenses, left respondent only $172,132.00 as net operating income for rate making purposes for the year 1933, which is substantially less than the amount recommended in the proposed report herein of $190,050.00 as fair net operating income. Had respondent's actual expenses been deducted after eliminating outside expense, bond interest, bond discount, fiscal agent's expense and interest, respondent's net operating income for the year 1933 would have been only $111,152.36, which is approximately $79,000.00 less than the reasonable net operating income recommended in the proposed report herein. Respondent avers that, if it is not permitted to establish of record the facts alleged in this section of this petition, it will be deprived, to its damage, of the full hearing contemplated by law.

[fol. 25]

V

For the reasons hereinbefore stated, and in view of the facts herein alleged, respondent avers that if an order is made by the Secretary, based upon the record of the hearing which closed on February 16, 1933, and respondent is denied the right to make proof of the changed conditions which have affected the business of respondent since said hearing was closed, respondent will be denied the full hearing authorized by law and its property will be subjected to confiscation in violation of the Fifth Amendment to the Constitution of the United States.

Respectfully submitted, Ross Dean Rynder, William N. Strack, Attorneys for Respondent.

January 30, 1934."

"State of Missouri,
County of Buchanan, ss:

C. F. Topping, being first duly sworn according to law, deposes and says that he is President and General Manager of the St. Joseph Stock Yards Company, respondent in the above entitled proceeding; that he has read the foregoing petition of respondent for reopening and further hearing and, upon facts appearing in the records of respondent and upon information and belief, he verily believes the allegations set forth in said petition are true.

C. F. Topping.

Subscribed and sworn to before me, a Notary Public, state and county aforesaid, this 29th day of January, A. D. 1934. J. E. Johnson, Notary Public. My commission expires March 8, 1934. (Seal.)"

That, as a part of said Findings, Conclusions and Order, said Secretary denied said Petition for Re-Opening. That in said Findings, Conclusions and Order, it appears that the findings made by said Secretary are based upon conditions [fol. 26] which existed with respect to the business of petitioner, including its income, expenses and other pertinent matters, during a number of years prior to and including 1932; that the order prescribed in said proceeding by said Secretary is to become effective in June, 1934; that, as more particularly appears in said Petition for Re-Opening, circumstances and conditions, including the nature of the services rendered by petitioner in operating its public stockyards, and its income and expenses in connection therewith, have materially changed since the year 1932 and preceding years; that the net operating income of petitioner for the year 1933 was $179,823.82, which is less than the reasonable net operating income which said Secretary found petitioner entitled to obtain as a fair return upon its property devoted to stockyards use; that said net operating income for the year 1933 is substantially less than the amount found by the Secretary to be a fair return on the fair value of petitioner's used and useful property; that the action of said Secretary in denying petitioner an opportunity to establish the facts stated in said Petition for Re-Opening was arbitrary; that, contrary to law, said Secretary has made and included in said Findings, Conclusions and Order certain facts concerning petitioner's operations, expenses and income dur-

ing the year 1933 (which is since the close of the hearing in said proceeding), and has included said findings in paragraphs 6e-6g, inclusive, thereof; that it was the lawful duty of said Secretary to permit petitioner, prior to his final decision in this case, to offer evidence in said proceeding for the purpose of establishing the allegations of said Petition for Re-Opening; that by said arbitrary action petitioner has been denied the full hearing in this proceeding required by statute; that the denial of said Petition for Re-Opening and the findings of the Secretary in connection therewith, [fol. 27] constituted an abuse of power on the part of said Secretary, contrary to the statute; and that said action of said Secretary upon said Petition for Re-Hearing will result, if said order is permitted to become effective, in confiscation of petitioner's property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(P) That, as a part of said Findings, Conclusions and Order, said Secretary finds the fair value of petitioner's property used and useful in the rendition of service in connection with its stockyards to be $2,743,000, and that a fair and reasonable net annual return thereon would be $192,010; that had the rates and charges prescribed by said Secretary in said Findings, Conclusions and Order been in force and effect during the year 1932, petitioner's net operating income would have been not more than $72,219.03; and had said rates and charges been in effect during the year 1933, its net operating income would have been not more than $127,791.39; that the net operating income of petitioner under the rates and charges prescribed by said Secretary would have been for the year 1932 and the year 1933, the amounts set forth above, which, respectively, are but a return of 2.63 per cent and 4.66 per cent upon the fair value of petitioner's property, as found by said Secretary, and but a return of 1.60 per cent and 2.84 per cent, respectively, upon the real and true value of the property used by petitioner in performing stockyard services; that it will be impossible for petitioner to charge or collect the increased charges for feedlot yardage or from traders or speculators, as estimated by the Secretary in determining a fair return; that after deducting the estimated increased income from feedlot yardage and traders and speculators, as determined by the Secretary, petitioner's net operating income for the

[fol. 28] year 1932 was not more than $53,814.65 and for the year 1933 was not more than $100,060.06; that upon said basis, which represents the maximum income which petitioner could have received under said order, petitioner would have obtained a return of but 1.96 per cent in 1932 and but 3.65 per cent in 1933 upon the fair value of petitioner's property as found by said Secretary; and a return of but 1.2 per cent in 1932 and 2.22 per cent in 1933 upon the real and true value of the property used by petitioner in performing stockyard services; that petitioner's property would thereby be confiscated, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(Q) If your petitioner fails to comply with said order of said Secretary, it may be subject to prosecution and incur liability for penalties in an amount of $500 a day, as against which liability your petitioner will have no adequate protection at law. On the other hand, if your petitioner, in order to avoid such liability for penalties, under duress, publishes and establishes the rates specified in said order of said Secretary, it will be required by law to collect those rates and no others. The substitution of said rates and charges, specified in said order of said Secretary, for the rates now in effect will result in great reductions in the revenues of your petitioner, such reductions approximating $80,000 per year. If later it shall finally be determined that said order of said Secretary is null and void, your petitioner will be without any means of collecting the difference between said rates prescribed by said Secretary and its present rates, if pending such final determination the said Findings, Conclusions and Order of said Secretary is permitted to become effective and your petitioner is required to publish and establish the rates therein specified. Therefore, if said order of said Secretary is not suspended, en- [fol. 29] joined, set aside and annulled, and if pending final determination herein, its enforcement is not temporarily stayed and suspended, your petitioner will suffer irreparable injury, for which it will be without adequate remedy or protection at law.

Wherefore, petitioner prays:

(1) That a writ of subpœna issue immediately out of and under the seal of this Court, and be directed to said

defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this Court and to answer this bill, but not under oath, answer under oath being hereby expressly waived;

(2) That this Court direct that due and proper notice of this petition and proceeding issue and be served forthwith, as prescribed in said Act of October 22, 1913 (28 U. S. C. A., Secs. 41 (28) and 43 to 48, inclusive);

(3) That a court constituted as required by said act of October 22, 1913 (28 U. S. C. A., Sec. 47) be convened and that said court so constituted and convened shall hear this petition upon due and legal notice to defendants;

(4) That upon the filing of this bill, the Judge of this Court shall call to his assistance two other Judges, one of whom shall be a Circuit Judge, and that upon three days' notice to defendants, this Court shall enter its order staying and suspending the enforcement, operation or execution of said order of said Secretary, and each and every part thereof, for sixty days from the date of said order; and that after five days' notice of the time and place of hearing having been given to defendants, petitioner herein be granted a temporary injunction restraining the said Secretary from enforcement of said order of May 4, 1934;

[fol. 30] (5) That this Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside, and annulling the said Order of said Secretary;

(6) That petitioner have and recover of the defendants the proper costs of this suit; and

(7) That the petitioner have such other and further relief in the premises as the equity may appertain and as may be deemed by this Court fit and proper.

William N. Strack, Union Stock Yards, Chicago, Ill.; Ross Dean Rynder, Union Stock Yards, Chicago, Ill.; Culver & Phillips, St. Joseph, Mo., Solicitors for Petitioner.

[fol. 31] *Duly sworn to by C. F. Topping. Jurat omitted in printing.*

[fol. 32] EXHIBIT "A" TO PETITION

UNITED STATES OF AMERICA:

Before the Secretary of Agriculture,

Bureau of Animal Industry

Docket No. 298

SECRETARY OF AGRICULTURE

v.

ST. JOSEPH STOCK YARDS COMPANY, Respondent

Findings, Conclusion and Order

I

Proceedings

1. This proceeding is a general inquiry under the Packers and Stockyards Act, 1921, as amended, into the reasonableness and lawfulness of the rates and charges of respondent for the stockyard services rendered by it at its stockyard at South St. Joseph, Missouri.

2. The proceeding was initiated by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on October 9, 1929. Said order and notice alleged that respondent was engaged in the business of conducting or operating a stockyard at South St. Joseph, Missouri, which had been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and posted as such; that, in accordance with the requirements of said Act, respondent had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner; that on September 30, 1929, respondent made and published Tariff No. 5, which was filed with the Bureau of Animal [fol. 33] Industry to become effective October 10, 1929; and that a proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedule of rates and charges as set out in Tariff No. 5. Accordingly, it was ordered that a hearing upon

the reasonableness and lawfulness of said rates and charges be held at a time and place specified in said order and notice. Notice of such hearing was given to respondent by serving upon it a copy of said order and notice.

3. Pursuant to the aforesaid order and notice, a hearing was held at St. Joseph, Missouri, before an examiner designated by the Secretary of Agriculture, which hearing began on the 2nd day of December, 1929, and was concluded on the 17th day thereof. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary of Agriculture, on the 13th and 14th day of May, 1930, and respondent submitted a brief.

4. On February 11, 1931, respondent filed a petition praying that, for reasons therein stated, an order be entered reopening the proceeding and that it be set down for further hearing on the matters stated in the petition. This petition was denied. The "Findings, Conclusions and Order" was issued by the Acting Secretary of Agriculture on July 20, 1931.

5. Respondent thereupon filed in the District Court for the Western District of Missouri a bill alleging, among other things, that the order of the Acting Secretary in denying the respondent a rehearing and in prescribing a schedule of maximum rates based on the record at the hearing in December, 1929, and without consideration of the changes alleged in respondent's petition to have occurred since the hearing, denied to the respondent a full hearing and, therefore, constituted a taking of respon- [fol. 34] dent's property without due process of law. The bill prayed injunctions both temporary and permanent against the enforcement of the order of the Acting Secretary. A temporary injunction was issued in accordance with the prayer of the bill and after a hearing at which the court received evidence in support of the allegations respecting changed economic conditions the injunction was made permanent. The court was of the opinion that the Acting Secretary of Agriculture erred in denying the prayer of the petition of the respondent for a rehearing.

6. In accordance with the opinion of the court, on July 19, 1932, the Secretary of Agriculture issued an order reopening the case and set it down for hearing beginning the 28th day of November, 1932. This date was continued

and the hearing was held beginning January 10, and concluding February 16, 1933.

6a. On January 6, 1934, counsel for the Government submitted to the Secretary of Agriculture, for his approval and signature, a proposed order finding that respondent's rates and charges are unreasonable and unjustly discriminatory and prescribing reasonable and non-discriminatory rates. On the same day a copy of the proposed order was transmitted to counsel for respondent and they were given until February 2, 1934, to file such exceptions to the proposed order as they might desire. On February 2, 1934, respondent filed twelve general, and one hundred specific exceptions to the proposed order. At the same time it filed a petition for a rehearing. On February 26, 1934, the matter was argued before the Secretary of Agriculture by counsel for the Government and for the respondent and, at the same time, each submitted a brief.

6b. Careful consideration has been given to each and every exception filed by respondent. Certain of the ex- [fol. 35] ceptions were well taken and they are reflected in these findings, conclusions and order. Other of the exceptions were without merit and are overruled.

6c. The petition for rehearing is upon the ground that since the date of valuation, August 1, 1932, and the closing of the audit of respondent's financial operations, December 31, 1932, there have occurred changes of such extraordinary character affecting the value of respondent's property, and its income, expenses and probable receipts of livestock at its stockyard that the record herein no longer fairly reflects these matters. Four such changes are alleged specifically. They are:

(a) The Governmental program for the reduction and limitation of livestock production;

(b) That part of the Governmental program for industrial recovery which seeks to increase wages and shorten working hours of employees and has brought about increases in respondent's payrolls;

(c) Departure from the gold standard for the currency of the United States and reduction of the gold content of the dollar to cause increases in commodity prices; and

(d) The results of respondent's operations in the year 1933, which, upon the basis of income for rate making purposes and reasonable expenses as characterized in the proposed order, are alleged to have produced a net operating income some $18,000 less than the fair net operating income found in the proposed order.

6d. While it is hoped and expected that the programs for recovery through the increase of agricultural and other commodity prices by controlling agricultural production and reducing the gold content of the dollar will accomplish their purposes, these programs presently are experimental. Even if they succeed, as planned, their actual effect on re- [fol. 36] spondent's particular business is problematical. Even if a rehearing were granted, all that could be adduced thereat would be opinions which would not be sufficiently expert to constitute evidence and the record would be no more informative than it now is. If, and when any of the recovery programs shall have brought about changes under which respondent's net income appears to have fallen, with reasonable permanency, below a fair return on the fair value of its property used and useful in the rendition of the services for which the prescribed rates are charged, the Secretary of Agriculture will, upon petition therefor, grant a rehearing or increase the rates as justice shall then appear to require.

6e. Investigation has been made of the allegations in Paragraph II of respondent's petition respecting increases in respondent's operating expenses through increased compensation to its employees, brought about by the Governmental program for industrial recovery and through the recovery which has resulted from that program. This investigation consisted chiefly of ascertainment by accountants of the Department of Agriculture from respondent's records of the amounts expended as compensation to employees since the alleged increases and a comparison of these amounts with the allowances in the proposed order to cover such expenditures. The investigation was made over the protest of respondent that to consider the result of it, without giving respondent opportunity to cross-examine the Department's accountants and to present evidence on its own behalf, would deny to it the full hearing provided by the Packers and Stockyards Act, 1921, and

would invade its constitutional rights. In the determinations hereinafter made respecting respondent's rates and charges and those prescribed for respondent as reasonable [fol. 37] and non-discriminatory no consideration is given to this, or any other information which is not contained in the record made at the hearings heretofore held. However, for the purpose of decision as to the granting or denial of respondent's petition for rehearing, it is deemed proper to consider the information obtained by the informal investigation. If this be not true, it must follow that either the Secretary is bound to pass upon the petition without investigation or else is required to grant a rehearing to determine whether he should grant a rehearing.

6f. Hereinafter it is found that respondent's reasonable operating expenses, other than repairs, provision for depreciation reserve and taxes, will be $302,500. This amount was arrived at by a process of drawing "normals" from respondent's actual experience in each of the years 1927 to 1932, respectively, in light of the record as a whole, and aggregating those normals. The "normals" so found to cover the outstanding items of payroll aggregate approximately $210,000. In addition, small amounts of payroll are included in "normals" found for certain other items and included in the reasonable expenses. In September, 1932, respondent made certain decreases in its rates of salaries and wages. In June, 1933, it effected certain other decreases. In August, 1933, it made certain increases in these items and again did so in December, 1933. The net result of these decreases and increases is that the rates of salaries and wages are not now as great as they were prior to the decrease of June, 1932. For the year 1933, the outstanding items of payroll, which made up the $210,000 included in the amount found for reasonable expenses aggregated $179,428.36. The total payroll for that year was $203,145. For January and February, 1934, when all increases were in effect, the total payrolls were $18,425.93 and $17,276.34, respectively. The average is $17,[fol. 38] 851.14. The monthly average of the allowance to cover the outstanding items of payroll is $17,501.90, but in the January-February, 1934 average, there are $877.13 for repairs. The January-February, 1934 outstanding payroll items aggregated for January, $16,334.74, and for

February, $15,300.13. Extending these over the year on the basis that the annual payroll will be approximately six times that of the first two months, the sum of $189,809.22 is obtained. This compares with the $210,000 included in respondent's reasonable expenses, as hereinafter found. It appears, therefore, that the effect on respondent's cost of the increases which have been made in compensation to its employees amply is cared for in the expenses hereinafter found to be reasonable.

6g. The yardage rates hereinafter prescribed applied to the volume hereinafter anticipated (Paragraph 201) results in an expected revenue from yardage of $425,900 (Paragraph 208). Applying these rates to the animals actually handled by respondent in the year 1933 produces yardage revenues of $399,509.16. The prescribed rates applied to the business actually done by respondent in January and February, 1933, produce yardage revenues of $59,926.07. For the same months of 1934, the prescribed rates would have produced $73,845.32. This increase of $13,919.25 in yardage revenues reflects an increase in volume of livestock handled.

6h. If rate determinations are to result from reasoned analysis of the evidence rather than more off-hand opinion considerable time must be consumed in their making. During that period some economic change is inevitable. Respondent has obtained one rehearing because the first hearing was followed by a general business depression which adversely affected respondent's gross revenues. It now seeks another because since the last hearing there has been a general improvement in those conditions. In determin- [fol. 39] ing the values used as the rate base, depression or stagnation values carefully have been avoided and normals used. The rates prescribed, which are now fair, will, as the economic improvement continues, become liberal. If rate regulation is to be effective, there must come at some time an end of hearings and a decision of the questions involved. This matter has been in hearing and litigation since the year 1929 and the time has now come for its decision. Accordingly, the petition for rehearing should be denied.

II

The Services Rendered by Respondent and the Rates Charged Therefor

7. There exists at St. Joseph, Missouri, a livestock market occasioned by the custom of producers and others who, having livestock to dispose of, ship it either by rail or truck to that place to be offered for sale to the various classes of buyers who congregate there. Such buyers consist chiefly of (1) local packers, whose plants are located at St. Joseph; (2) local butchers, who cater principally, if not exclusively, to the local demand for dressed meats and meat products; (3) order buyers, who purchase for packers located at points other than St. Joseph and for farmers and feeders of livestock; (4) dealers or traders, who purchase on their own account and usually for the purpose of resale without removing from the market and (5) the feeders and farmers, some of whom operate, either within or nearby the property of respondent, facilities known as feed lots, feed yards or feed barns and others of whom take the livestock to their farms for the feeding and finishing. The activities conducted by or through these various [fol. 40] classes of purchasers are, when considered collectively, usually denominated "the buying power of the market."

8. The producers and others shipping livestock to market for sale generally operate through agents known as "commission men." The sellers and their agents are usually spoken of collectively as "the selling side of the market."

9. Respondent, the St. Joseph Stock Yards Company, provides the physical facilities which constitute the market place, and renders certain services, hereinafter more fully described, in connection with the livestock (other than livestock fed in transit and direct shipments to packers and feeders) which comes there primarily to be marketed and only secondarily to be warehoused, fed, watered and otherwise attended to.

10. Respondent, in common with others interested in the market, has encouraged and promoted its development. Respondent's contribution has been chiefly in assisting in the strengthening of the buying power of the market

through aid in bringing in additional buyers. It also has expended considerable effort in inducing additional shipments to the market by those who have livestock to sell.

11. Respondent's specific functions are threefold: First, the provision of a market place; second, the provision of a depot for the unloading and loading of livestock brought to the market by railroads and by motor trucks or other vehicles; and third, the warehousing of the livestock so brought to market.

12. Incidental to its furnishing of a market place, respondent provides two office buildings within the stockyard area in which buildings the various classes of buyers and the representatives of the sellers can and largely do have offices for the transaction of their businesses. The [fol. 41] actual buying and selling of livestock is not, however, done in these buildings but in the yards among the pens where the animals are held. There are other tenants in these office buildings, such as insurance companies, the inspectors of brands of cattle, food concerns, a bank, and representatives of the United States Government. Respondent also has its offices in one of the buildings. The larger of these buildings is known as the Exchange Building and the smaller as the Annex.

13. Respondent's function as a livestock depot requires it to provide (1) docks for loading and unloading, which are long narrow platforms adjacent to and parallel with the tracks of the St. Joseph Belt Railway Company and raised to a height practically level with the floors of standard livestock cars; (2) chute pens, which are fenced enclosures into which the above described chutes lead and which are used to hold the livestock until it can be driven to the pens called "sales pens," where it is warehoused by respondent and exhibited for sale by the owner or his representatives; (3) chutes, which are inclined walkways for livestock leading down from the aforesaid chute pens; (4) an alley, which is a narrow, paved drive-way used in driving the livestock from the "chute pens" to the "sales pens"; and (5) a similar arrangement of docks at the level of truck floors as well as chutes, pens, and an alley for unloading livestock brought to the stockyards by truck and for loading animals dispatched therefrom by the same mode of conveyance.

14. That portion of respondent's property which is devoted to its function of warehousing livestock is reminiscent of a city for human habitation in that mostly it is divided into blocks surrounded by paved runways, called "alleys" and the blocks are divided into fenced and paved pens de- [fol. 42] signed to keep separate the livestock of different owners. Collectively the pens devoted to the warehousing of a single species of livestock are called a "division." There also are "divisions" within "divisions." For example, the "cattle division" is divided into the "commission division," wherein the livestock of the "original shippers" is warehoused, and the "traders division," wherein livestock which has been purchased by the traders or dealers and is being held for resale by them, is warehoused by respondent. Practically all of the hog and sheep divisions are under roof, while most of the cattle division is not. Again like a city there are certain conveniences, such as an elaborate system of sewers for draining the pens, a water system providing running water to a trough in each pen, a system of electric wiring and fixtures for lighting the pens, alleys, etc.; a feeding and bedding service, requiring storage barns for hay feed, and bedding, elevators for grain feeds, feed carts and horses or tractors, feed bins, feed racks or mangers, etc.; manure disposal, tractors and trailers and a small plot of ground without the stockyard as a place whereat to dump the manure in a public sewer; what may be termed as a "health service" employing an immunizing plant whereat hogs sold in the yard for shipment to the country for stocking or feeding purposes are immunized against certain diseases, dipping vats wherein cattle and sheep are immersed in solutions which rid them of certain skin diseases and parasites; and some other "services" of a minor nature.

15. In the foregoing description the facilities used by respondent in the performance of each of its several functions have been allocated in a general way to the respective function as to which they chiefly are employed. However, there is no clear, sharp line of demarcation. For instance, [fol. 43] certain portions of the Exchange Building and its Annex may be devoted from time to time to uses partaking more of the warehousing function than of providing a market place; the alley assigned to the livestock depot function is also used in connection with the warehousing function;

certain pens usually associated with warehousing are used at times in performing the livestock depot function and parts of the facilities devoted to the sewer, water, light, feeding and bedding, manure disposal and health "services" serve jointly in the performance of all three functions.

16. Respondent's stockyard is surrounded by the tracks of the St. Joseph Belt Railway Company, a corporation which, at the time of the first hearing, was a subsidiary of the respondent, but now independently owned. Over its tracks the livestock which comes to St. Joseph by way of the various trunk line railroads is brought to the unloading docks above described. There respondent, acting as servant of the trunk line or line haul carrier, unloads it over the unloading docks and into the chute pens. This service is performed under contract with the railroads and for it respondent receives from the respective railroads $1.25 per single deck and $1.50 per double deck car.

17. Respondent assumes responsibility for driving livestock from the chute pens to the sales pens of the respective consignees and placing it therein. This operation is frequently designated "yarding the livestock." However, there is an oral agreement between respondent and the "commission men," who are the usual consignees of the livestock, that the latter will "yard" all livestock consigned to them which arrives after the hour of seven a. m. The "commission men" make no charge to respondent for so [fol. 44] doing. The record indicates that the "commission men" do not always yard such livestock. The greater volume of the livestock arrives before the hour of seven a. m. Hence, respondent actually does the greater part of the "yarding" of livestock which arrives by rail. The greater part of that arriving as so-called "drive-ins" appears, however, to be yarded by the consignee. Tests made of a week in January in the years 1927, 1928 and 1929, respectively, show that in 1927, 77.64%, in 1928, 59.6% and in 1929, 61.3% of the livestock arriving by rail was yarded by respondent, while for 1928, 18.9% and for 1929, 29.5% of the driven-in livestock was so yarded. There is no showing as to the amount of driven-in livestock yarded by respondent in the year 1927. The record contains no data on this for years subsequent to 1929.

18. When the livestock is placed in the sales pens the consignee or his agent, the commission man, usually the latter, takes charge of it, orders feed for it, sorts it, shows it to prospective purchasers, sells it and drives it to the scales maintained by respondent, where it is weighed by respondent. By the custom of the market, title to the livestock passes to the purchaser when the animals are driven off the scales. The charges of the commission men for these and other services rendered their principals are, under the law, subject to regulation by the Secretary of Agriculture.

19. For the services rendered by respondent in warehousing the livestock from the time it leaves the railroad chute pens or is received at the drive-in division, until it is driven off the scales, including such driving as is done by respondent, the counting, checking and keeping record of the number and identity of the livestock in each consignment, the furnishing of water and the weighing, respondent charges [fol. 45] to the owner of the livestock who brought, or caused it to be brought to market, usually called the "original shipper," the following rates:

Cattle	35¢ per head
Calves (cattle weighing 400 lbs. or less)	25¢ per head
Hogs	12¢ per head
Sheep and goats	8¢ per head
Horses and mules	35¢ per head

In addition to the above yardage charges, which apply whether the livestock comes to the stockyard by rail, on foot or in vehicle, a charge, stated in respondent's schedule to be for the use of special facilities, is assessed against all livstock received in vehicles, such as automobile trucks and wagons, as follows:

Cattle	5¢ per head
Calves	2¢ per head
Hogs	2¢ per head
Sheep and goats	2¢ per head
Horses and mules	5¢ per head

The above stated charges, usually designated "yardage charges" are considered as covering the warehousing of the livestock throughout its stay in the stockyards regardless of the duration thereof or the number of changes of ownership which occur, the exception being that on livestock re-

sold in the commission division one-half of the above rates additional is charged.

20. Dealers or traders and others who have purchased livestock in the stockyard sometimes place it with a "commission man" to be resold. Such livestock is said to be "planted" and sometimes it is referred to as "seconds." When such livestock is resold, respondent charges to the vendor thereof the one-half rates mentioned in the preceding paragraph. No such charge is scheduled to cover resales made elsewhere than in the "commission division," but in practice respondent does not observe its published [fol. 46] tariff in this regard and imposes the one-half charges on resales wheresoever made if they do not involve livestock "to go to the country," that is, purchased by farmers to be fed.

21. When livestock comes to the market and, for any of a number of reasons, is forwarded to another market or driven to the country without being sold or weighed no yardage charge is imposed.

22. Some livestock comes to the stockyard consigned directly to packers and other users under circumstances such that it is not sold in the stockyard. The yardage charges detailed above are assessed against this livestock and imposed upon the person who causes it to come to the stockyard.

23. It is evident that the theory upon which the schedule of rates and charges is constructed is that whosoever causes livestock to come to the stockyard shall pay yardage charges, which are in effect an entrance fee, and that thereafter no further yardage charges should be imposed, except in case of livestock resold in the commission division. Inasmuch as the producer of livestock, either directly or through the country livestock buyer, causes the great bulk of the livestock to come to the stockyard, the burden of maintenance of the stockyard properties and services through the payment of yardage charges falls most heavily upon him.

24. When the livestock has been weighed and title has passed from the original shipper, as hereinbefore described, the nature of its further handling by respondent depends upon the class of purchaser who has acquired it.

25. If the purchaser be a local packer, the livestock is driven by respondent from the scales to a section of the cattle, hog or sheep division of the stockyard, as the case may be, known as the "packers' holding pens." There it is held in respondent's custody until such time as the [fol. 47] packer who purchased it takes delivery of it and drives it out of the stockyard. These "packer holding pens" are approximately similar in physical characteristics to those in the so-called "commission division" where the "original shipper's" livestock is yarded, and practically the same services are rendered by respondent in connection with the livestock in the one as in the other, except that that in the "packers' holding pens" is not usually fed or weighed. No charge is made to the packer for these services or the use of these facilities in connection with livestock which he has purchased in the stockyard.

26. If the purchaser be a dealer or trader, the livestock, in most instances, is driven by respondent to, and yarded in, pens allotted to the purchaser in those respective sections of the cattle, hog and sheep divisions which are known as the "traders' divisions." The physical characteristics of the "traders' divisions" are substantially the same as those of the "commission divisions" and the services rendered by respondent with respect to the livestock warehoused in each do not differ materially. The livestock is held in the "traders' divisions" until the trader sells or otherwise disposes of it. There respondent furnishes feed and water to it, making a charge for the former but not for the latter. There the trader shows it to prospective purchasers and usually sells it. Thence the trader drives it to the scales where it is weighed by respondent. For the use of these facilities and for these services respondent makes no charge to the trader on livestock sold "to go to the country" and only a half charge on that sold for other purposes. Of course, respondent makes for the feed fed to livestock in the traders' pens the same charge as for that fed elsewhere and contends that the "spread" in such charge is in part, at least, remuneration for the use of the pens.

[fol. 48] 27. If the purchaser be an "outside packer," as those packers who are not located at St. Joseph are designated, or a farmer or a feeder or a breeder of livestock, who is not located at or near the stockyard, the livestock is driven to the "shipping division" adjacent to the loading

docks and there held until all things are in readiness for its loading out. Such loading is done by respondent in performance of its livestock depot function and for it respondent receives $1.25 per single deck and $1.50 per double deck car from the line haul carrier involved. For the driving to the holding pens and the use of these facilities respondent neither makes any charge nor receives any compensation other than the original yardage charge paid by the "original shipper."

28. The foregoing applies to livestock purchased to be shipped out by rail. That to be trucked out, either to a purchaser outside of St. Joseph or to a packer or butcher located in that city but not immediately adjacent to the stockyard, is driven to the truck-in division for the species involved and there held for the truck driver employed by the purchaser who loads it onto a truck.

29. If the livestock be purchased by or for the operator of a feed lot or barn adjacent to the stockyard it is driven from the scales to the purchaser's feed lot or barn by the purchaser.

30. The service of driving livestock from the scales where it has been weighed to the point where it is to be loaded-out or delivered to the purchaser may be designated "re-yarding." Considering the operation as a whole, most of the re-yarding is done by respondent. Tests of a week in January in the years 1927 and 1928, show that in the former 89% and in the latter 92% of all re-yarding was done by respondent.

[fol. 49] 31. Hereinafter there is found a total area of 4,409,411 square feet as the used and useful land of respondent. On this area are situated all of respondent's structures which are found to be used and useful. These structures have been divided according to the primary use to which they are put under the designations "Initial Yarding Facilities," "Re-yarding Facilities" and "Packers' Storage Facilities." The initial yarding facilities are facilities used in handling livestock prior to the times it is sold and passed from the original shipper to the purchaser. The following table shows in detail the areas used for different purposes in connection with the initial yarding facilities:

Section	Pens		Alleys	Scales	Dock and Inclines	Truck Approach	Gutters	Total Area
	No.	Area	Area	Area	Area	Area	Area	
Carlot Cattle Div.:								
Commission	470	368,503	66,212	18,852	.....	.....	.....	453,567
T. B. Free	1	2,079	.....	.....	.....	.....	.....	2,079
T. B. Quar	4	2,688	.....	.....	.....	.....	.....	2,688
Scabies Quar	2	609	.....	.....	.....	.....	.....	609
General	.....	.....	140,862	.....	.....	.....	.....	140,862
Truck Cattle Div.:								
Commission	41	7,412	2,832	480	.....	.....	.....	10,724
Unloading	11	1,900	.....	.....	1,272	5,584	.....	8,756
Carlot Hog Div.:								
Commission	364	152,136	70,069	19,754	.....	.....	9,011	250,970
Cripple	.....	.....	.....	618	.....	.....	.....	618
General	.....	.....	22,725	.....	.....	.....	.....	22,725
Drive-In Hog Div.:								
Commission	203	18,942	14,160	1,956	.....	.....	.....	35,058
General	.....	.....	4,267	.....	.....	.....	.....	4,267
Unloading	19	3,070	.....	.....	2,260	10,794	.....	16,124
Carlot Sheep Div.:								
Commission	60	45,750	13,548	9,244	.....	.....	.....	68,542
General	.....	.....	13,128	.....	.....	.....	.....	13,128
Drive-In Sheep Div.:								
Commission	99	10,483	4,320	2,416	.....	.....	.....	17,219
General	.....	.....	1,144	.....	.....	.....	.....	1,144
Unloading	9	1,152	128	.....	768	39,120	.....	41,168
	1,283	614,724	353,395	53,320	4,300	55,498	9,011	1,090,248

[fol. 50] The re-yarding facilities are used in connection with the handling of livestock after it has been sold by the original owner and title has passed to the first purchaser. These facilities include the area used by traders who operate in the yard, the area used by order buyers and the area used for livestock purchased by packers or other buyers while it is being held tentatively and before final delivery is made by the respondent company. The following table shows in detail the area used for different purposes in connection with the re-yarding of livestock:

Section	Pens		Alleys	Scales	Dock and Inclines	Gutters	Total Area
	No.	Area	Area	Area	Area	Area	
Carlot Cattle Div.:							
Traders	128	157,076	23,564	4,340	.....	.....	184,980
Order Buyers	3	4,096	.....	.....	.....	.....	4,096
Purchasers, Temporary, Holding	552	125,794	52,068	.....	.....	.....	177,862
Truck Cattle Div.:							
Purchasers, Temporary, Holding	7	3,456	1,440	.....	.....	.....	4,896
Loading	8	864	.....	.....	396	.....	1,260
Carlot Hog Div.:							
Traders	8	4,920	910	.....	.....	488	6,318
Order Buyers	14	8,649	5,863	.....	.....	350	14,862
Purchasers, Temporary, Holding	90	103,050	10,824	.....	.....	4,788	118,662
Drive-In Hog Div.:							
Purchasers, Temporary, Holding	21	15,187	2,850	.....	.....	.....	18,037
Carlot Sheep Div.:							
Purchasers, Temporary, Holding	35	26,696	11,808	.....	.....	.....	38,504
Drive-In Sheep Div.:							
Purchasers, Temporary, Holding	29	6,055	1,544	.....	.....	.....	7 599
	895	455,843	110,871	4,340	396	5,626	577,076

[fol. 51] The packers storage facilities are facilities used by Swift and Company and Armour and Company for holding livestock which they have purchased and on which they have taken delivery. This livestock is held in these pens until the packers remove it to the packing plant for slaughter. The area of the facilities allocated to each of these packers is as follows:

Section	Pens		Alleys	Total
	No.	Area	Area	Area
Swift & Co. (Tract C)	37	42,666	14,828	57,494
Armour & Co. (Tract A)	10	16,384	1,792	18,176
	47	59,050	16,620	75,670

In general it may be stated that approximately 62% of the area on which respondent's facilities are located is devoted to the initial yarding facilities, 33% to re-yarding facilities and a little over 4% to the packers' storage facilities. Of the re-yarding facilities 33% is occupied by traders and 3% by order buyers and the remainder consists of temporary holding pens for purchaser's livestock. For the use of these facilities the traders, order buyers and other purchasers do not pay any yarding charge. In stating that these three classes of facilities are used for specified services it is meant that these facilities customarily are so used. It should not be understood that any portion of the property is never used for any other purpose, for nothing in the stockyard is as static as that. The primary object is to take care of all the livestock which comes to the stockyard and in case of an extraordinarily large volume of livestock being received, or other emergency, the usual customs and routines give way to the accomplishment of the primary purpose.

34. Incidental to its functions of providing a livestock depot and a livestock warehouse, respondent supplies feed [fol. 52] and bedding to the livestock in its custody, whenever such feed or bedding is ordered by the owner of the livestock or his agent. The feeds fed are principally (1) hay, both prairie and alfalfa; (2) corn and (3) oats. Straw is used for bedding. Feed and bedding are supplied to livestock both in the pens of the stockyards and in the railroad cars. The charges vary from time to time in accordance with fluctuations in the market prices. At the date of the

hearing the charges for feed and bedding supplied to pens were:

Hay, prairie	$1.10	per cwt.
Hay, alfalfa	1.50	" "
Corn	.75	per bushel measure.
Oats	.90	per bushel measure.
Bedding (straw or hay)	.60	per bale.

When feed and water are supplied to livestock in cars a charge of $1.00 per deck is made in addition to the above feed charges. In some instances hay is purchased in ton lots, delivered to the pens by respondent but fed by the purchaser. In such cases a reduction of $2.00 per ton is made.

35. The difference between (1) the market price of feed or bedding delivered at the stockyards, and (2) the price paid for it by the owner of the livestock is spoken of as the "spread." For the years 1927 to 1932, inclusive, the average spread on hay and corn, which constitute the principal feeds sold by the respondent, was:

	Hay (per cwt.)	Corn (per bu. measure)
1927	$.65	$.59
1928	.71	.62
1929	.71	.69
1930	.71	.72
1931	.67	.74
1932	.67	.55

[fol. 53] 36. These "spreads" represent gross and not net profits. Handling costs, overheads, and other indirect costs have not been deducted from gross profits. If such costs were deducted there would remain net profits in excess of what properly might be called the merchandising profits. There is no feeding done in the stockyard without charge. Therefore, the effect of these "spreads," in addition to providing a merchandising profit, is (1) to mitigate in part such inequality as may result from the failure to apply yardage charges to all persons who receive warehousing services, and (2) to some extent to give effect in charges to the element of time in the stay of the animal in the stockyard. Under the system of yardage charges now in vogue, there is paid on a consignment of livestock which is sold and

removed from the stockyard within a few hours after its arrival, the same charges as on a consignment which is warehoused for several days. Obviously the cost of the latter service is greater than that of the former but probably it would be impracticable to attempt to graduate the yardage charge according to the length of time the animal is warehoused. Until some simple plan, not yet suggested, is discovered, so to do would introduce an intricacy and confusion in collecting such graduated yardage charge which would be defeative of the object sought.

37. The extent to which the time element in the warehousing of livestock is reflected in the increased income from feed is illustrated by the following facts: In the year 1932 there were handled in the commission division 421,271 head of cattle and calves. During the same year dealers purchased 89,476 head of cattle and calves, or the equivalent of approximately 21% of the number handled by commission merchants. The principal feed fed to cattle and calves is hay. During the year 1932 a total of 5,524,088 pounds of hay was sold to commission men and during the same period [fol. 54] a total of 2,250,298 pounds of hay was sold to dealers. Of the total hay sold to commission men and dealers by the respondent, 57% was purchased by commission men and 41% by dealers, although the number of head of cattle and calves handled by dealers was only 21% of the number handled by commission men. This indicates that on an average the cattle and calves warehoused by respondent for dealers were held at least twice as long as were the cattle and calves handled for the original shipper. It also indicates that any reduction in the "spread" on the price of feed or bedding will be to the advantage of that class of patrons whose livestock remains longest in the yards, unless there be a compensating adjustment in the rate structure.

38. The respondent does not set forth in its schedule of rates and charges, filed pursuant to the requirements of the Packers and Stockyards Act, 1921, the charges it makes for (1) the unloading and loading of livestock for the railroads, and (2) for the use of space by tenants in the Exchange Building and certain garages and the rental on the Transit House hotel. The amounts received from the fol-

lowing sources are set forth in the record and are as follows for each of the years from 1927 to 1932, inclusive:

	Unloading & loading	Rentals Exchange Building	Rentals garages
1927	$50,031.00	$41,474.57	$3,147.00
1928	52,011.00	41,606.36	3,167.00
1929	46,179.00	41,078.05	3,160.00
1930	38,091.00	39,677.04	3,167.00
1931	28,422.00	39,641.05	3,262.00
1932	19,592.00	38,714.50	2,705.52

39. Respondent sets forth in its schedule of rates and charges the charges it makes for certain specific services [fol. 55] rendered by it. Among these services are the vaccinating of hogs, the cleaning and disinfecting of pens and cars, and dipping and spraying. The charge for the use of facilities for vaccinating hogs is ten cents per head. The respondent "accepts no responsibility for damage or loss of animals in process of vaccination. Owners make their own arrangements for serum and veterinary service." Cleaning and disinfecting charges apply "whenever it is necessary to clean or disinfect any portion of the respondent's pens by reason of the movement in or through the yard of livestock infected with contagious disease." The charges for cleaning and disinfecting are as follows:

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys (same rates as pens)	.37 per 100 Sq. feet
Wagons and small trucks	.75 each
Trucks of two tons capacity or over	1.00 each

The income derived from cleaning trucks of manure and debris is in addition to that derived from the charges enumerated above. Respondent furnishes the facilities, the dip and labor used in dipping livestock, and makes the following charges for the services rendered:

Cattle	.35 per head, minimum $35.00
Calves	.15 per head, minimum $35.00
Hogs	.05 per head
Sheep	.05 per head, minimum $ 8.00
Goats	.05 per head, minimum $ 8.00

Under circumstances set forth in the schedule, the minimum per owner may be less than indicated above. The revenues derived from these special services for each of the six years from 1927 to 1932, inclusive, are as follows:

[fol. 56]

	Vaccinating & spraying hogs	Cleaning & disinfecting	Dipping
1927	$3,291.85	$353.90	$339.07
1928	4,238.40	298.20	171.71
1929	2,735.15	234.88	3,046.89
1930	1,871.45	184.17	.....
1931	3,666.56	144.58	14.10
1932	1,649.50	82.65	.....

In addition to the revenues received from yardage and the sale of feed, and those miscellaneous activities enumerated above, the respondent receives revenues from other miscellaneous activities which do not grow out of "rates and charges" or for which no rates or charges are listed in respondent's tariff. The sum of all of these represents the funds available for the paying of all operating expenses, provision for appropriate reserves, and a return upon the value of the property devoted to public use.

40. A test of the reasonableness of the rates now being charged by respondent is whether the revenue produced by them is substantially in excess of the amount necessary to pay the reasonable cost of rendering the services for which those rates are charged, including in such costs a fair return upon the fair value of respondent's property used and useful in the rendition of such services. A test of the reasonableness of rates to be prescribed, if those now being charged by respondent be found to be unreasonable, is whether the revenue reasonably to be anticipated from them are sufficient to pay the aforesaid reasonable costs of rendering the services. To the end that these facts may be determined, it is necessary to ascertain from the evidence (1) the property used and useful in the rendition of the services; (2) the fair value of that property; (3) the [fol. 57] fair return on that fair value; (4) respondent's reasonable operating expenses; and (5) the volume of busi-

ness reasonably to be anticipated for respondent in the immediate future.

Used and Useful Character of Respondent's Property

41. At the time of the first hearing respondent's land consisted of 372.414 acres or 16,222,354 square feet and 77.46 acres or 3,374,158 square feet leased to the Belt Railway, making the total area of the land owned 449.874 acres or 19,596,512 square feet. Between the date of the first hearing and 1932 all the land was resurveyed and certain sales and purchases took place. These changes resulted in additions to and deductions from the amount of land owned in 1929. The gross additions were 8.770 acres or 382,059 square feet, and the deductions were 87.142 acres or 3,795,927 square feet. As a result of these changes the amount of land owned by the respondent at the time of the second hearing was 371.502 acres or 16,182,641 square feet.

42. Two witnesses were called by the respondent and one by the Government, who testified with respect to the used and useful character of respondent's property. As a basis for respondent's testimony, Respondent's Exhibit 135 was prepared. It sets out the various tracts of land by zones, uses to which the various areas are put, the area claimed to be used and useful in connection with the rendition of stockyard services and the area which respondent admits is not used and useful. As a basis for the Government's testimony, Government Exhibits 107 and 107-A were prepared. Government Exhibit 107 is a map on which are delineated various tracts designated "items," which the witness appearing for the Government testified were not in his opinion used and useful. Government Exhibit 107-A [fol. 58] is a description of these various tracts, giving the area in square feet and the zone in which they are located.

A summary of the lands which respondent claims are used and useful is as follows:

Zone	Area	
	Acres	Square feet
A	71.726	3,124,389
B	17.816	776,060
C	24.655	1,073,972
D	11.436	498,152

Zone	Area	
	Acres	Square feet
E	10.283	447,927
F	45.951	2,001,626
L (Road and Refuse Dump)	1.478	64,360
N (Road and Manure Disposal Area)	1.186	51,675
1	.544	23,697
2	3.190	138,956
3	1.291	56,250
Total	189.556	8,257,064

A summary of the lands which respondent concedes are not used and useful is as follows:

Zone	Area	
	Acres	Square feet
F-1	.874	38,071
I	9.400	409,464
H	10.313	449,234
G	22.752	991,077
J	24.873	1,083,468
K	16.083	700,577
L (Except road to refuse dump and the dump)	16.838	733,483
M	12.516	545,197
N (Except road and manure disposal area)	55.226	2,405,647
3	13.071	569,359
Total	181.946	7,925,577

[fol. 59]

Zone A

43. Zone A contains 71.726 acres or 3,124,389 square feet. Within this zone are located the unloading and loading facilities, the cattle, hog and sheep divisions of respondent's stockyard, the Exchange Building and Annex, runways and viaducts for livestock, barns and elevators for feed, feedlots, and substantially all of the other facilities ordinarily used in the handling of livestock by the respondent in the conduct of its business of operating a stockyard.

Unloading and Loading Facilities

44. Items 1, 12 and 14 consist of the loading and unloading facilities, including the docks, chute pens, inclines and

chute alley. These facilities are used in connection with unloading and loading livestock received at or shipped from respondent's stockyard by rail. A witness called by the Government testified that these facilities and the land occupied by them are not used and useful because he considers the services of unloading and loading a part of the transportation service and not a stockyard service within the meaning of that term as used in the Packers and Stockyards Act, 1921. Witnesses called by the respondent testified that in their opinion the unloading and loading of livestock is a stockyard service. They testified further that all livestock handled by rail is unloaded or loaded by respondent company and that it is paid by the line haul carriers for furnishing the service a fee of $1.25 per single deck and $1.50 per double deck car. These witnesses testified that from the time the livestock is unloaded out of the car on to the unloading dock it is in the custody of the respondent and that the respondent assumes all responsibility for it. [fol. 66] The witness for the Government did not controvert this latter position but contended that the respondent accepts livestock as agent for the carrier and that in its capacity as a stockyard operator respondent does not receive the livestock until counted out of the chute pens. Whether the unloading or loading of livestock is a transportation service need not be passed upon in this order. It is a fact, nevertheless, that the respondent performs the actual function of unloading and loading livestock arriving by or shipped out by rail, which service it renders in the capacity of an independent contractor and for which it receives the fees heretofore mentioned. Whether the unloading and loading of livestock from and into railroad cars be regarded as a transportation or a stockyard service or both, it is a service rendered for the original shipper for which he pays in the line haul rate the charges shown above. In the performance of this service the stockyard company uses indiscriminately, and without segregation of hours, labor also otherwise employed about the stockyard. Determination of the cost of rendering this service as segregated from that of respondent's other activities would result merely in removing a part of the charge to the shipper from the category of yardage and placing it in that of transportation or vice versa. For this reason the properties used, the expenses incurred, and the revenues received in the

rendition of these two services are considered as a whole. The value of the loading and unloading facilities is included as a part of the common rate base.

Packers Storage Facilities

45. Items 2 and 11 consist of pens and alleys designated by the witness Christensen as "packers' storage facilities," in which livestock purchased by Armour and Company and [fol. 61] Swift and Company are yarded after these packers have taken delivery of it at other pens designated by the same witness as "packers' holding pens." Christensen testified that in his opinion the furnishing of these facilities to the packers does not constitute a stockyard service, his reason being that respondent delivers custody of the livestock to the purchaser at the holding pens and exercises no further control over it. Certain of respondent's officers testified that in the ordinary course of the operation of the stockyard the furnishing of these facilities to the packers is a stockyard service; that, if these pens were not furnished respondent would be under the necessity of holding the livestock in the pens to which it was yarded immediately after passing over the scales; that, if this were done, more pen and other space would be required; that, if these facilities were not furnished, the packers might very well delay purchasing until the livestock was needed at their plants, which would result in the slowing up of the market and a possible reduction in the price received by the sellers. It is not necessary to pass here upon the question of whether the holding of livestock for packers is a stockyard service for which separate charges should be collected. This land is so intermingled with that devoted to general stockyards use that even if it were vacant its value would be included in the general rate base. This area is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein being determined.

Covered Stock Driveway

46. Item 3 consists of the covered stock driveway leading from the storage pens used by Armour and Company and also from the west end of the hog alley located at the south [fol. 62] line of the hog division, to the property line of

Armour and Company's plant. This driveway is used for moving livestock purchased by Armour and Company from respondent's stockyard to Armour and Company's plant. The right of the purchaser of livestock to have a reasonable time within which to remove his purchases from the stockyard necessarily carries the right to a reasonable means for so removing them. To require that they be taken by the shortest route to public or private roadways and there co-mingled with the vehicular traffic thereon would be unreasonable. Therefore, respondent has provided to the outer boundary of the tract of land on which the stockyard is located the covered stock driveway here in discussion. This driveway is part of a stock driveway which originally began at the south line of Illinois Avenue and continued south adjoining the east line of Packers Avenue until the end of that Avenue is reached. At this point it turned west and continued to the east line of Armour and Company's property. The driveway is now thus located except that near the south line of Illinois Avenue a portion of it has been converted into an incline approach to the new stock viaduct which is dealt with hereinafter. Witness Christensen segregated as Item 3 that portion of this driveway which lies south of the alley extending from the south side of respondent's hog division. His opinion that Item 3 is not used and useful appears to be based on the thought that respondent has done all that is necessary when it has provided a way for the delivery of livestock purchased by Armour and Company at that portion of its general stockyard area nearest that packer's operating plant and that such packer should there assume the burden of providing a way for the animals to be driven to the point in its plant where they are desired. So to do, however, would necessitate either turning the animals into Packers Avenue, con- [fol. 63] structing a viaduct across it, or a driveway around it located as is the one under discussion. The management has seen fit to adopt the course last mentioned. Its action in so doing cannot be said to be sufficiently unreasonable to warrant the interference of the regulatory authority. The land and other property constituting such driveway is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

New Stock Viaduct

47. Items 4 and 15 consist of what is described as the new stock viaduct. This viaduct crosses Illinois Avenue connecting the cattle and sheep divisions with the stock driveway on the south side of Illinois Avenue and an L from this viaduct crosses Packers Avenue and leads to the property of Swift and Company. With the exception of a small part of the approach which is on Swift and Company's land, this viaduct is all located on the land of the respondent. The viaduct is used for moving cattle and sheep purchased by Armour and Company from the cattle and sheep divisions across Illinois Avenue, and hogs purchased by Swift and Company from the hog division on respondent's property to the plant of Swift and Company. This viaduct was constructed after the date of the first hearing in this case, and Swift and Company, Armour and Company, and respondent each paid one-third of the cost of its construction. Prior to the construction of this viaduct livestock was moved over this land at grade level. It was necessary to throw gates across Illinois Avenue and Packers Avenue. This created congestion as the result of stopping truck and other traffic moving in and out of the [fol. 64] respondent's yard and also along Packers Avenue. The only question raised by the evidence as to the used and useful character of this facility is whether, in view of the fact that respondent bore only one-third of its cost, the viaduct should go into the rate base at its entire present value or at one-third thereof. Inasmuch as title to the entire facility rests in respondent and the rate base is being found on the basis of cost of reproduction new less depreciation there can be no warrant for excluding two-thirds of the value of this facility unless upon the ground that the packers' contribution is the best measure of their interest in and benefit from the facility and that such interest and benefit, or as it is sometimes expressed "joint-use," renders the facility only proportionately used and useful in connection with respondent's rate base. That portion of this viaduct which passes over Illinois Avenue together with the inclines necessary to reach that portion cannot be distinguished as to used and useful character, from those portions of the stock driveway which lie immediately north and south of the inclines. Their used and useful character

is not questioned. Therefore, the portions of the stock viaduct last mentioned are found to be properly includable in the respondent's rate base at their full present value based upon the cost of reproduction new less depreciation. As to the L which extends across Packers Avenue to the line of Swift and Company's property its inclusion in the rate base at full value is supported by the same reasoning which led to the inclusion therein of the covered stock drive. Consequently this entire facility, including respondent's land upon which the structure rests, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined in this order.

[fol. 65] Packers Avenue

48. Items 5 and 16 consist of Packers Avenue extending from the Belt Railway tracks at the northerly boundary of the main stockyard area to the point at which the Armour covered stock drive crosses respondent's property leading to Armour and Company's property line. The portion of Packers Avenue lying north of the south line of Illinois Avenue and extending to Lake Road is used by all classes of traffic coming from the north to respondent's property, and the evidence adduced indicates that substantially one-half of the truck traffic coming to the stockyard passes over Packers Avenue. The part of Packers Avenue extending south of the south line of Illinois Avenue is used to only a limited extent in connection with respondent's business. Witnesses for the respondent testified that it was necessary to have access to the west side of respondent's property along Packers Avenue south of Illinois Avenue so that fire trucks could get in and also so there would be access at this point of respondent's property for cleaning and other equipment. The portion of Packers Avenue north of the south line of Illinois Avenue is used by traffic coming to the St. Joseph Warehouse and Cold Storage Company, Swift and Company, and Armour and Company, and the portion of Packers Avenue south of the south line of Illinois Avenue is used by all traffic moving to and from the packing plant of Armour and Company. The main trunk sewer used for draining respondent's property and also used by the two packers is located within the boundary lines of Packers Avenue and extends its entire length. This sewer

is used principally for draining the stockyard area although it is connected with Armour and Company's plant and furnishes Armour and Company an outlet for its sewage. Packers Avenue is a private roadway necessary to [fol. 66] the respondent in the conduct of its stockyard operations. Such use as it grants to others is terminable at the will of the respondent. Its area is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined in this order.

Anchor Serum Company Land

49. Part of Item 7 consists of property occupied by the Anchor Serum Company. This company is an independent operator which manufactures hog cholera serum and numerous other biologic products. A witness called by the respondent testified at length, contending that property occupied by this company should be considered used and useful, and as the basis for his testimony prepared Respondent's Exhibit 139 in which he outlined the rental received for the land together with various other items of income which he attributed to the presence of the Anchor Serum Company at the market. A witness called by the Government testified that in his opinion the Anchor Serum Company conducted a business which was not in any way connected with stockyard services and for that reason the property occupied by it should be excluded. An analysis of the evidence with respect to this firm shows that it is an independent operator which leases the property and exercises control over it. While it is a factor on the market, because it purchases a certain number of hogs on the open market and thus adds to the buying demand, this fact does not lead to the conclusion that the property occupied by it is used in connection with stockyard services. There is a disagreement between the witness Christensen and the witness called by the respondent as to the area in Zone A occupied by the Anchor Serum Company. It is found that the area occupied by this company, as determined by the witness for [fol. 67] the respondent, is 44,535 square feet. It is found that this area and the structures located thereon are not used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined in this order.

Land South of the Drive-in Hog Division

50. Item 8 consists of a tract of land lying south of the drive-in hog division and having an area of 103,723 square feet. It lies within the general stockyard area and is found to be used and useful in the rendition of the services the reasonableness of the rates for which are determined herein.

Land West of Packers Avenue

51. Item 10 consists of a tract of land extending west from the west line of Packers Avenue immediately west of the termination of Illinois Avenue a distance of approximately 500 feet. The witness for the Government testified that this tract of land is used for the purpose of parking automobiles by employees of the adjacent packing plants and that it is entirely without the stockyard area. He stated that, in his opinion, it is not used and useful for stockyard purposes. The witness for the respondent testified that this area is necessary for the parking of trucks and automobiles belonging to patrons of the respondent; that the respondent company does not police this area but that many patrons of the market park their automobiles and trucks in this area. If the evidence showed that respondent had found it necessary to set aside this area and the space for the parking of trucks and other vehicles driven to the locality by those who have business with the respondent its claim for the inclusion of the land in the rate base would be [fol. 68] more convincing. On the contrary it appears quite clearly that respondent treats the land as vacant, leaving it to be used by any who see fit to park their vehicles upon it. There is nothing to indicate that it cannot be monopolized by employees of the packing plants, leaving respondent's patrons no opportunity to use it. It is found, therefore, that this tract is not used and useful in connection with the rendition of stockyard services.

Land on Which Offices of Sheep Commission Men Are Located

52. Item 13 consists of two small offices occupied by two commission firms in the sheep division. It is found that the land on which these are located and also the structures are used and useful in connection with the rendition of stockyard services.

Land on Which Exchange Buildings Are Located

53. Item 17 consists of the area on which is located the Exchange Building and the Exchange Building Annex and the vacant ground adjoining these buildings. The witness for the Government testified that in addition to the space used by the respondent the buildings were occupied by various classes of tenants, including commission firms, traders, packers, a bank, post-office, other Government offices, and tenants conducting miscellaneous types of business. He stated that in his opinion the furnishing of these offices to tenants is not a stockyard service and that a division of this property should be made on some equitable basis eliminating that part not actually used by the respondent. A witness appearing for the respondent testified that the operation of these buildings and the leasing of space to these various classes of tenants is a necessary incident to the [fol. 69] operation of a public market; that it is necessary that office space be provided for tenants of this character at a stockyard in order that the market be conducted efficiently and that the operation of buildings similar to those operated by the respondent is a common practice at all of the principal markets. It is the opinion of respondent's witness that the operation of the Exchange Building and Annex constitutes stockyard service and that, therefore, the buildings and the ground occupied by them should be considered as used and useful. An analysis of the entire evidence with respect to the Exchange Building and the Annex leads to the conclusion that the operation of these buildings is a necessary incident to the operation of respondent's stockyard. It is found that these buildings and the land occupied by them, and the vacant land immediately surrounding them, are used and useful in connection with the rendition of stockyard services.

Land on Which Garages Are Located

54. Items 18, 19 and 20 (Gov. Ex. 107 and 107-A) consist of three sets of garages, one located adjoining the Exchange Building grounds, one near the sheep drive-in division, and one on the right-of-way of the Belt Railway. These garages are used for the storage of automobiles owned principally by tenants of the Exchange Building and Annex and by various persons having business in the sheep division. The location of the two sets of garages in Zone A

is such that if no garages were on the land, it, nevertheless, would be included as used and useful land for the reason that it is so interspersed with land occupied by respondent's operating facilities as to be impractical of segregation. In such circumstances the fact that the land is put to a use not necessary to the rendition of the services for which the [fol. 70] rates under determination are charged should not be held to render it not used and useful. It is found, therefore, that the land owned by respondent on which garages are located and the garages thereon are used and useful.

Land Used as Entrance to Subway

55. Item 21 (Gov. Ex. 107 and 107-A) consists of the land occupied by the west entrance to the subway which extends from the Exchange Building grounds on the west and beneath the tracks of the Belt Railway and the Burlington, Rock Island, and Santa Fe railroads and has its entrance east of the Santa Fe tracks. This subway which was constructed a number of years ago at a time when respondent company owned the Belt Railway was paid for in part by respondent. Since the date of the first hearing in this cause respondent has disposed of all its interest in the Belt Railway. The purpose of this subway is to enable all persons coming to respondent's property by foot to reach that property without the necessity of passing over the various railroad tracks at grade. The evidence indicates that very little use is actually made of the subway. It is found that the area owned by respondent which covers the west subway entrance is used and useful in connection with the rendition of stockyard services. It is further found that no part of the value of this subway except that of the structures on respondent's land should be included in the rate base.

Old Southern Cattle Division

56. Item 22 (Gov. Ex. 107 and 107-A) consists of the property used for loading and unloading Southern cattle at the time when such cattle were moved in interstate commerce. Movement of such cattle has now been discontinued and the property included under Item 22 is now used by the [fol. 71] respondent as a dock in connection with the disposal of such manure as is shipped from respondent's stockyard by rail. The evidence raises some question as to

whether the entire area occupied by the dock is necessary for this purpose. However, it is not clearly shown that respondent does not need all of this dock for the shipment of manure. In the absence of such a clear showing the fact of actual use must control and the entire area is found to be used and useful.

Vacant Land Near Nichols and Davis Feedlot

57. Item 23 (Gov. Ex. 107 and 107-A) consists of a vacant space in the northern portion of respondent's Zone A, lying between the so-called Nichols and Davis feedlots and was formerly a part of the Southern cattle division. The witness called by the Government testified that in his opinion this property is not used and useful for the reason that it is now vacant and unused. It is found that the land covered by this item is used and useful for the reason that it is a small integral part of respondent's general stockyard area.

Land Occupied by Feedlots

58. Item 24 (Gov. Ex. 107 and 107-A) consists of various tracts of land which are used in connection with the operation of various feedlots. These feedlots are allocated to different persons who use them for the holding, handling and feeding of cattle, hogs and sheep. Such allocations do not confer upon the persons who receive them the right to hold the feedlots for any particular period. Respondent may repossess the feedlots at any time, but, in practice, the allocations have, since the year 1929, remained fairly static. The operators of these feedlots purchase this livestock [fol. 72] either at respondent's stockyard or away from the market and move it to the feedlots where it is fed varying lengths of time and then sold, largely to packers. The evidence shows that the larger part of the business conducted by these feedlot operators consists of the feeding of lambs and that these lambs are fed a comparatively short length of time, usually 30 or 40 days. They are then sold in the feedlots to packer buyers and moved through respondent's stockyards over the scales to the plants of the packers. For this respondent receives its regular yardage charges in addition to the feedlot yardage charges. The witness appearing for the Government was of the opinion that these feedlots are not used and useful for the reason that the feeding of livestock in them is comparable to the ordinary

feeding of livestock in farm feedlots; that this feeding of livestock is not a part of the ordinary marketing process and that, therefore, furnishing of these feedlots is not a stockyard service within the meaning of that term as defined in the Act. Witnesses appearing for the respondent, on the other hand, vigorously contended that the furnishing of these feedlots is a stockyard service. They stated that particularly with respect to lambs the feeding period is for a comparatively short length of time and not comparable to the feeding of lambs in the ordinary farm feedlot. They further contended that, by virtue of the buying demand resulting from the purchases made by the operators of these feedlots respondent's market is strengthened and that inasmuch as the second yardage is paid on all livestock in these feedlots their operation results in a benefit to respondent's business as a whole. They further stated that the charges made for the use of these feedlots is on a per head basis and is covered in an item in respondent's tariff in a manner similar to other charges made by respondent. Among the rates the reasonableness of which is the sub-[fol. 73] ject of this inquiry are the rates charged for the service rendered by respondent in the use of these feedlots. While, therefore, the property devoted to that service is not properly a part of the rate base for determining the reasonableness of the rates charged the original shippers it is properly a part of the common rate base for the determination of the reasonableness of all the rates here under investigation and therefore it is found to be used and useful.

Vacant Land Near Feedlots

59. Item 25 (Gov. Ex. 107 and 107-A) is a narrow strip of land lying west of the feedlots and between the feedlot properties located in the northerly part of Zone A. It originally was a part of the old quarantine dead line. The witness appearing for the Government testified that this land is not now being used and for that reason in his opinion it is not used and useful. It is found that this tract is used and useful for the reason that the land is a small integral part of respondent's general stockyard area.

Vacant Land East of Packers Avenue

60. Item 26 (Gov. Ex. 107 and 107-A) consists of a narrow strip of vacant and unused land lying east of Packers Avenue and west of the pen area. Inasmuch as it is within

the confines of the general stockyard area it is found to be used and useful for the same reasons as outlined.

Vacant Land West of Packers Avenue

61. Item 27 (Gov. Ex. 107 and 107-A) consists of a long narrow strip of land having an area of 50,268 square feet and lying immediately west of the west line of Packers Ave- [fol. 74] nue between the plant of Armour and Company and what is spoken of in the record as the plant of Morris and Company, which now belongs to Armour and Company. The witness for the Government testified that this was formerly considered to be a part of the Belt Railway right-of-way but was not included in the Belt Railway sale; that it serves as a main entrance to Armour and Company's plant and is not used by the respondent in the conduct of its yard. He stated that in his opinion it is not used and useful. The witness for the respondent testified that he had negotiations under way for the exchange of this land for a tract of land immediately contiguous to Item 10, which would result in enlarging Item 10 so that it would be more suitable for parking purposes. He further stated that respondent is not using this tract at the present time. It is found that this tract of land is not used and useful in connection with the rendition of stockyard services.

62. A summary of the land found to be used and useful in Zone A is as follows:

Total Area		3,124,389
Excluded as Not Used and Useful:		
Item 7	44,535	
" 10	25,613	
" 27	50,268	
Total Area Excluded		120,416
Total Area Used and Useful		3,003,973

Zone B

63. Zone B has an area of 776,060 square feet lying south of Illinois Avenue. On it are located a part of the Anchor Serum Company's plant, drainage ditch, some feed lots and a small part of the water tank area.

64. Item 6 and a part of Item 7 (Gov. Ex. 107 and 107-A) [fol. 75] consist of land occupied by the O'Connell feedlot and the structures located thereon. The use of this prop-

erty is similar in character to the use of the property described under paragraph 58. Accordingly, it is found that this property is used and useful.

65. A part of Item 7 (Gov. Ex. 107 and 107-A) is used as a site for the Anchor Serum Company. The use to which this part of Item 7 is put is similar to that discussed under paragraph 49 and the area of the land described under Item 7 in Zone B is accordingly found to be not used and useful. There is disagreement between the witness for the Government and the witness for the respondent as to the area in this zone occupied by the Anchor Serum Company. The area of 304,914 square feet, as testified to by respondent's witness, is accepted.

66. Item 9 (Gov. Ex. 107 and 107-A) consists of 67,400 square feet of land located south of the main hog division. The witness for the Government testified that this land was vacant and unused and not available for any particular use. The witness for the respondent testified that this tract should be considered used and useful for the reason that on it is located an open ditch extending the entire length which drains the south portion of the truck hog dock, a portion of the grain elevator area, and all of the water tank area, and also a part of the area lying in Zone B. This tract is long and narrow in shape and follows in a general way the line of the Belt Railway tracks which it adjoins. This tract is approximately 950 feet long. Government Exhibit 107 indicates that a strip of land 12 feet wide is ample to accommodate the ditch in question. There is no evidence to the contrary. It is found, therefore, that 11,400 square feet of this area is used and useful and that the remainder is not used and useful.

[fol. 76] 67. A summary of the land found to be used and useful in Zone B.

Total Area		776,060
Excluded as Not Used and Useful:		
Item 7—Part occupied and leased by Anchor Serum Co.	304,914	
Item 9—Part not occupied by ditch	56,000	
Total Area Excluded		360,914
Total Area Used and Useful		415,146

Zone C

68. The area of this zone is 1,073,972 square feet, most of which is devoted to agricultural purposes, feedlot and miscellaneous uses.

Land Devoted to Farming

69. Item 41 (Gov. Ex. 107 and 107-A) consists of a tract of land having an area of 781,244 square feet, triangular in shape, lying south of Lake Road, east of Packers Avenue, and north of the Belt Line Railway. The land is rented for farming purposes and the witness for the Government testified that it is not used and useful in connection with stockyard services. It is the contention of the respondent that this area should be included in the rate base as land to accommodate possible expansion of the stockyard facilities and certain of its officers so testified. At the first hearing respondent's manager was of opinion that in order to extend the stockyard facilities over this area it would be necessary to remove the tracks of the Belt Railway which lie between this area and Zone A as, in his opinion, it would not be feasible to operate over these tracks. Since [fol. 77] the first hearing respondent has relinquished its control over the tracks and consequently its power to remove them without obtaining the consent of the present owner. It is found that the land in this tract is not used and useful in connecton with the rendition of stockyard services.

Land Devoted to Feedlot and Miscellaneous Uses

70. Item 42 (Gov. Ex. 107 and 107-A) consists of land occupied by a feedlot; land on which is located a part of the meter house; land lying north of the feedlot and described as a horse and wagon yard having an area of 36,693 square feet; land occupied by what is described as the old deck having an area of 6,800 square feet; and land lying south of the feedlot and north of the Belt Railway tracks, having an area of 28,901 square feet. There is also in Zone C, adjacent to Item 42, but not within any numbered item, 950 square feet which lies within what would be Missouri Avenue if that street were extended over onto respondent's land. The use to which the land occupied by the feedlot is put is similar to that already described. Accordingly this land is found to be used and useful. The

meter house is owned by respondent and is used in connection with the water service and supply to respondent's stockyard. The land occupied by it is found to be used and useful. There is no testimony in the record which indicates that the area described as the horse and wagon yard, which lies between the feedlot and the old dock, is used in any way in connection with stockyard services. Neither is there any testimony that the area occupied by the old dock is used for stockyard services. The witness called by the Government testified that in his opinion the area occupied by these two tracts is not used and useful. It is found that these tracts are not used and useful. With respect to the area lying south of the feedlot and north of the Belt Rail- [fol. 78] way tracks, respondent's witness testified that this area was necessary for truck parking in connection with trucks handling sheep coming to the drive-in division. It is found that this area is used and useful. The 950 square feet above mentioned appears to be used as a part of the truck parking space and the entrance to the sheep division and for these reasons is found to be used and useful.

Packers Avenue

71. Item 43 (Gov. Ex. 107 and 107-A) consists of land occupied by Packers Avenue from the north side of the Belt Railway right-of-way to the south line of Lake Road which extends through Zone C. In accordance with what has heretofore been said the entire area of this land is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

Vacant Land

72. Item 44 (Gov. Ex. 107 and 107-A) has an area of 11,800 square feet and consists of vacant land located north of the old dock discussed under Item 43. Witness for the Government testified that in his opinion it is not used and useful. The witness for the respondent testified that it was being held for expansion purposes. It is found that this tract of land is not used and useful in connection with the rendition of stockyard services.

73. Item 45 (Gov. Ex. 107 and 107-A) consists of a triangular piece of land having an area of 74,233 square feet and lying west of Packers Avenue, south of Lake Road and north of the Belt Railway tracks. The witness for the

Government testified that it was formerly leased for farm-
[fol. 79] ing purposes but that it is now vacant and unused. The witness for the respondent testified that the property is being held for stockyard use in case there is a demand for it. It is found that this area is not used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined, even though respondent be holding it as a site for future expansion of its stockyard facilities.

Roadway

74. Item 46 (Gov. Ex. 107 and 107-A) is a roadway extending from Packers Avenue on the west along the northerly line of the Belt Railway tracks to the west line of Item 42. At the time of the first hearing in this case this roadway had been closed and not reopened for use. The witness appearing for the Government testified that it is now open and that there is some evidence of its having been used but that it is unimproved and not suitable for truck traffic except when the road is dry. The witness called by the respondent testified that this roadway gives a short cut-off between the sheep drive-in division and the hog and cattle drive-in divisions and is available for use by trucks delivering more than one species of livestock. The evidence shows that in addition to this roadway there are available two roads which are paved their entire length between the truck-in divisions of respondent's property. There are times when Item 46 is used by patrons of respondent's market but it is apparent from an analysis of the entire record that this roadway is not altogether essential to the respondent in the conduct of its business. It is found, however, that the land occupied by it is used and useful.

[fol. 80] 75. A summary of the land in Zone C found to be used and useful is as follows:

Item 42—Rockhold Feedlot	78,190
Parking between Belt Railway and sheep barns	28,901
Meter House	144
Item 43—Packers Avenue	17,850
Item 46—Roadway	37,167
Missouri Avenue extended	950
	163,202

Zone D

76. Item 28 (Gov. Ex. 107 and 107-A) is a tract of vacant land, bisected by the right-of-way of the Belt Railway, lying west of Packers Avenue, north of the plant of Swift and Company, south of the plant of the St. Joseph Warehouse and Cold Storage Company and containing an area of 498,152 square feet. It is now vacant and unused with the exception that a steam pipe line extending from Swift and Company's property passes over it to the plant of the St. Joseph Warehouse and Cold Storage Company. The witness for the Government testified that in his opinion this tract is not used and useful for the reason that it was not now and, in so far as he was able to determine, never had been used in connection with the rendition of stockyard services. The witnesses for the respondent contended that this tract is used and useful as a site for the location of a possible additional packing plant. Respondent's contention that this zone should be included in the rate base appears to rest upon its view that it should retain vacant areas to be used as sites for packing houses in the event respondent is able to induce the location of additional packing plants adjacent to its stockyard; that such plants would [fol. 81] increase the buying power at the market and therefore be beneficial to respondent's patrons; wherefor its present patrons, consisting chiefly of the so-called original shippers, should pay the carrying charges on such vacant and unused land. At the first hearing respondent's manager testified that, though no new packer had located adjacent to the stockyard, he was then in negotiation with one to do so. Cross examination revealed that the packer referred to was doing business in the vicinity of St. Joseph, Missouri, and already purchasing on the St. Joseph Stockyard his entire requirements of livestock. At the second hearing, held some two years later, the packer had not been induced to locate at the stockyard. The matter resolves itself into the question whether respondent's present patrons should be made to pay the carrying charges on land from which they derive no use on benefit because there is a speculative prospect that at some time in the indefinite future it may be converted into a use which may in some indirect way benefit respondent's then patrons. Answering that question in the negative, the area is found to be not used and useful in the rendition of the services for

which are charged the rates the reasonableness of which is herein determined.

Zone E

77. Item 33 (Gov. Ex. 107 and 107-A) which consists of the entire area of Zone E is used in connection with the O'Connell feedlot. Its area is 444,927 square feet. In accordance with the discussion of the feedlots under paragraph 58, the area in this zone is found to be used and useful.

[fol. 82]

Zone F

78. Item 32 (Gov. Ex. 107 and 107-A) is the land in Zone F and has an area of 2,001,626 square feet. It is located south of the general area occupied by respondent's stockyard and is separated from it by the tracks of the Belt Railway Company. With the exception of a ditch running along the northern boundary of the tract, it consists of farm land. The witness called by the Government testified that because of its use for farming purposes it is not in his opinion used and useful in connection with the rendition of stockyard services. The witness called by the respondent contended that this tract is used and useful as a site for a possible large packing plant and that the area occupied by the ditch is used and useful for the reason that it drains an area which is actually used in the rendition of stockyard services. It appears that the land occupied by the ditch is primarily used for draining the remainder of the land in the zone and only secondarily for carrying water accumulated from respondent's Zone B. The remainder of the area is not used in any way in connection with the rendition of stockyard services. It is found that the area included in this tract is not used and useful.

Zone L

79. Items 36 and 37 (Gov. Ex. 107 and 107-A) consist of a roadway, having an area of 42,400 square feet located in Zone L, from Lake Road to a dump located on the bank of the Missouri River; the city dump; and farm land. The witness for the Government testified that the roadway is used by the city and by the public for ingress and egress to the city dump and for that reason it is not, in his opinion, used and useful. He further testified that the roadway is

[fol. 83] leased to the city. A witness appearing for the respondent contended that this roadway was used and useful for the reason that respondent has occasion to haul various waste materials to the dump and that facilities for use in connection with the disposal of such waste materials are necessary. It is found that the land included in the roadway is not used and useful. The witness for the Government testified that Item 37 consisted of farm land. The witness for the respondent called attention to the fact that an area of 21,960 square feet of this item located on the bank of the Missouri River at the point where Item 36 reaches the river is occupied by a refuse dump, and the witness further testified that this dump was necessary to the respondent. It is found that the land occupied by this dump is not used and useful in connection with the rendition of stockyard services.

Zone N

80. Respondent concedes that none of this zone except an area of 36,600 square feet used for manure disposal and an area of 15,075 square feet designated a private road is used and useful or should be included in the rate base. There is no dispute in the evidence as to the used and useful character of the area devoted to the disposal of manure and it is here found to be used and useful. The area of 15,075 square feet designated by respondent as a private road and shown on Government Exhibit 107 and 107-A as part of Item 40 is merely respondent's right of reversion to the land underlying a public street known as Exchange Street. Respondent's contention is that because it owns the fee simple title to land over which the public has and is using an easement for a street and because that street [fol. 84] is one of the avenues used by truck drivers in hauling livestock to the public stockyard such land should be included in the rate base, even though it is not physically connected with any part of respondent's stockyard. To state this contention is to answer it and the 15,075 square feet involved is found to be not used and useful.

Zone 1

82. A part of Item 48, having an area of 1,966 square feet, is occupied by a part of the feedlots used principally by Stevens and Williams. The use of this area is similar to that discussed under paragraph 58 and, accordingly, it is

found to be used and useful. A part of Item 48, having an area of 3,951 square feet, is occupied by the entrance to these feedlots leading from Illinois Avenue. It is found that this area is also used and useful.

83. Item 49 (Gov. Ex. 107 and 107-A) consists of a part of Lot No. 5 located south of Illinois Avenue. On this area, 1,975 square feet, is located part of a building now vacant which at the time of the first hearing was occupied by a harness shop. There is no evidence that the former use of this building was connected in any way with the respondent's business as a stockyard operator, and as the building is now vacant and unused it is found that the building and the land owned by the respondent on which part of the building is located is not used and useful.

84. Item 50 (Gov. Ex. 107 and 107-A) consist of land having an area of 15,805 square feet occupied by the Transit House Hotel. The witness for the Government testified that the hotel is operated in the same manner as any commercial hotel; that the patronage is limited and the facilities are availed of principally by commercial truck drivers [fol. 85] who haul livestock to respondent's stockyard. He stated that in his opinion this property is not used and useful in connection with the rendition of stockyard services. Witnesses appearing for the respondent contended vigorously that the operation of this hotel is a necessary incident to the operation of the stockyard. The evidence shows that the hotel was built many years ago; was constructed at a time when transportation facilities between the stockyard area and the main up-town area were limited and that at the time of its construction there was need for hotel facilities near respondent's stockyard. It appears that at the time of the first hearing herein this hotel was leased for a rental of $1,200 a year under a contract whereby the books of the operator were open to respondent's inspection and, whenever it appeared that the business done warranted an increase of the rental, it might be so increased. The business had not justified such an increase up to the time of the second hearing. The decadence of this property as an income producer has resulted principally from the development of good roads, motor vehicles and the street-car system which connects it with the main business section of the city of St. Joseph,

as well as from the change which has come about in the method of marketing livestock. Respondent's contention is that the maintenance of this hotel is needful and the property should be included in the rate base because it is necessary that there be a clean, comfortable place near the stockyard at which drivers of livestock trucks, shippers to respondent's stockyard, and other persons coming to the stockyard may stop, even though they cannot or will not pay rates sufficient to produce revenues great enough to pay taxes, insurance and upkeep of the property, to say nothing of a return on its value. It is respondent's contention, [fol. 86] therefore, that the general patrons of its stockyard should contribute, through rates, moneys sufficient to yield it a fair return on approximately $100,000 which it claims to be the value of this property. The record does not reveal any way in which the maintenance of this hotel contributes to the performance of the services rendered by the respondent to those who pay rates at its stockyard. If the property be included in the rate base the practical effect is that an annual charge will be levied upon respondent's patrons, principally the original shippers, to maintain for truck drivers and others who care to avail themselves thereof hotel facilities more expensive than they can or will pay for. Moreover, it does not appear that the operation of a commercial hotel is a stockyard service. Accordingly, this item together with the structures thereon is found to be not used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

Zone 2

85. A part of Item 48 (Gov. Ex. 107 and 107-A) having an area of 136,956 square feet is occupied by a part of the feedlots described under paragraph 82. This area is accordingly found to be used and useful.

86. Item 51 (Gov. Ex. 107 and 107-A) consists of a small tract of land having an area of 2,000 square feet adjoining Lake Avenue on which is constructed a small blacksmith shop which is operated commercially. It is found that this tract of land and the structure located on it are not used and useful in connection with the rendition of stockyard services.

[fol. 87] Zone 3

87. A part of Item 48 having an area of 200,640 square feet is occupied by feedlots which are a part of the feedlots mentioned under paragraph 82. Accordingly, this area is found to be used and useful.

88. Item 52 (Gov. Ex. 107 and 107-A) consists of a tract of land containing 201,643 square feet which is leased to the Kelsey Nurseries, a commercial enterprise. It is found that the land located on this tract is not used and useful in connection with the rendition of stockyard services.

89. Item 53 (Gov. Ex 107 and 107-A) consists of an area of 223,326 square feet located in Lots 1 and 12 which lie south of the area known as the old horse and mule division now occupied by feedlots. This land is vacant and unused. It is found that it is not used and useful in connection with the rendition of stockyard services.

90. A summary by zones of the land hereinbefore found to be used and useful and found to be not used and useful is as follows:

[fol. 88]

Zone	Used & useful square feet	Not used and useful square feet	Total square feet
A	3,003,973	120,416	3,124,389
B	415,146	360,914	776,060
C	163,202	910,770	1,073,972
D		498,152	498,152
E	447,927		447,927
F		2,001,626	2,001,626
F-1		38,071	38,071
G		991,077	991,077
H		449,234	449,234
I		409,464	409,464
J		1,083,468	1,083,468
K		700,577	700,577
L		797,843	797,843
M		545,197	545,197
N	36,600	2,420,722	2,457,322
1	5,917	17,780	23,697
2	136,956	2,000	138,956
3	200,640	424,969	625,609
Total	4,410,361	11,772,280	16,182,641

Land for Expansion

91. During the first hearing in this case data were introduced showing the acreage of land brought into use since 1915. Evidence was also introduced showing the area of land which had gone into disuse. The net additional area of property actually brought into use during this period amounts to less than thirteen acres. Since the data of the first hearing a small additional area has been brought into use which amounts to a fraction of an acre. Witnesses appearing for the respondent testified that in their opinion the volume of livestock received at the market would tend to decrease rather than to increase. They testified further that any increase in the percentage of livestock received by truck would require additional facilities. The record in- [fol. 89] dicates, however, that the policy of the company in the past has been to remodel existing facilities in connection with the increase in truck receipts. Based on the entire record, it appears that, when consideration is given to the area of land in Zone A found to be used and useful, which includes areas of vacant land, ample provision is made for any need for expansion for a reasonable time in the future. Furthermore, the land occupied by present feedlot facilities and packers' holding pens is so located that in the event it becomes necessary for respondent to expand its other facilities this land will be available for use. It is found, therefore, that no land in addition to that heretofore found to be used and useful should be included as used and useful under the designation of expansion land.

Structures

92. It is found that all structures on land found to be used and useful are also used and useful, and it is further found that all structures located on land found not to be used and useful are also not used and useful.

IV

Valuation of Used and Useful Land

93. Respondent's land was valued by two appraisers for the Government; one called at the first hearing and the other at the second. It was also valued by three apprais-

ers for the respondent. One of these testified at both hearings, one at the first hearing only, and one at the last hearing only.

94. W. L. Mack, a witness called by the Government during the first hearing, resided in St. Joseph, Missouri, and was engaged in the real estate business in that part of the city known as South St. Joseph, for approximately 20 years. [fol. 90] The greater volume of his business was in South St. Joseph. At one time he specialized in sub-divisions. He was a member of the Real Estate Board. His appraisal experience consisted of approximately five months' work in connection with revaluing property in St. Joseph for tax purposes; approximately $200,000 worth of property for the school board; the valuation for the Burlington railroad of cheap residential property located in Florence Addition adjacent to the stockyards and miscellaneous minor tracts. The valuation of respondent's property in this proceeding is the largest appraisal made by this witness. Mack submitted two appraisals. In one of these he appraised the property taking into consideration the fact that it was being used for stockyard purposes. He stated with respect to Zone A: "Thirty-five cents was the value I placed upon the land when used for stockyard purposes. I had no idea of appraising it for any other purpose than that." In the other he considered the use of the property for non-stockyard purposes. The witness Mack showed a number of transfers of property which had taken place in and about South St. Joseph some of which were in the immediate vicinity of respondent's property. He stated, however, that the only ones to which he had given weight were certain transfers in connection with Tract 14 on which is located the Transit House. He stated that, in his opinion, the other transfers had no bearing whatsoever on the value of respondent's land. As to his method of arriving at value he said: "I based my appraisal of respondent's land outside of the corporate limits of St. Joseph on my intimate knowledge of the cost of producing it, the valuation of it as a stockyards, brought about by a city of its size and character; the accommodation of the agricultural country furnishing adequate market for its products such as corn and [fol. 91] livestock of various kinds. In making my appraisal I used my general knowledge gained in my experience as a real estate man."

95. John A. Zelinski, the witness called by the Government in the second hearing, is a civil engineer graduated from Ohio State University and is a resident of Washington, D. C. He has engaged in general engineering work and was at one time assistant city engineer for Painesville, Ohio. He was employed by the Interstate Commerce Commission from 1917 to 1928, except for approximately twenty months when he was in the United States Army, and a part of a year when he was engineer for the Diamond Alkali Company of Fairport, Ohio, and the Fairport, Painesville and Eastern Railroad. During the period he was with the Commission he occupied all of the positions in the appraisal work from Junior Land Appraiser to Assistant Supervisor of Land Appraisers. During this period he was connected with the appraisals of the Pennsylvania Railroad lines east, including the terminals at Cleveland, Detroit, Pittsburgh, Philadelphia, New York and Washington, and the New York Central properties at New York, Buffalo, Cleveland and similar cities. In 1928 he became Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities. Since 1929 he has been engaged in privat practice as a consultant on railroad and utility regulatio . As a consultant he has valued lands for the Pere Marquette Railroad, the Virginian Railway, the Western Maryland Railway, the Lake Superior and Ishpeming Railroad, the Canton Railroad of Baltimore, the Louisiana and Northwest Railroad, the Unity Railways of Pittsburgh, and the Aliquippa Southern Railroad. In 1931 he appraised the lands of the Omaha Union Stockyards Company, Omaha, Nebraska. He also appraised the lands [fol. 92] of the Sioux City Stockyards Company, Sioux City, Iowa. In making his appraisal of respondent's land, Mr. Zelinski obtained information from the Interstate Commerce Commission relative to valuation proceedings in connection with the St. Joseph Belt Railway, whose land adjoins that of respondent. With two of the appraisers employed by respondent he made an investigation of 147 transfers of property in the vicinity of respondent's stockyards. He made on the ground a study of the use of respondent's land; accessibility to it by roads, streets and railroads, the character and kind of railroad and switching facilities available. He gathered general statistical information which might have a bearing on the general value situation in the

territory. He personally viewed and studied each of the zones into which he divided the property and upon which he placed a value. In arriving at his appraisal value of the various zones, Zelinski used primarily the values determined from sales of the most nearly similar, and comparable property. These values were modified in accordance with differences which affect values between the properties of the respondent and those used for purposes of comparison.

96: William E. Spratt, a witness called by the respondent in both the first and second hearings and who submitted an appraisal of respondent's property at each hearing, has resided in St. Joseph, Missouri, for more than forty years and for many years has been engaged in the real estate business. He has been prominent in city activities, having been president of the St. Joseph Chamber of Commerce, the Rotary Club and the Automobile Club. He was for two years mayor of the City of St. Joseph. He was also secretary of the St. Joseph chapter of the Red Cross Society. In connection with his real estate business he has made ap- [fol. 93] praisals of numerous properties located in the City of St. Joseph, and valued for the St. Joseph school board thirty-four lots located in St. George's addition, not far from respondent's property. He served on a commission which condemned for parkway and boulevard purposes some 600 acres of land, consisting of approximately 1,100 parcels. He made an appraisal for the Burlington Railroad, a number of years ago, of some 60 or 70 houses or lots and later was employed by the same company to purchase about 100 houses and lots in connection with the company's development of its Florence Yards. In 1917 he was employed jointly with Atkinson by the six trunk line railroads entering St. Joseph to value all the land in the city, exclusive of improvements, owned by those carriers. The value of this property totaled $8,000,000. In 1921 he was employed by the St. Joseph Water Company to appraise the real estate holdings and rights-of-way of that corporation. In 1925 he appraised a number of properties for the St. Joseph Gas Company. He has appraised a number of properties for the Union Terminal Railway Company and of the Belt Railway Company. He is the local examiner and appraiser for the Santa Fe Savings and Loan Associa-

tion and the Metropolitan Savings and Loan Association of Kansas City. Since the date of the first hearing he has assisted in appraising the land of the St. Joseph Water Company, the St. Joseph Light and Power Company, and individually has appraised the land of the St. Joseph Gas Company. He re-appraised the land of the respondent company for its hearing before the court during the injunction proceedings in this case. In 1930 he testified in proceedings involving the recapture of excess earnings of the St. Joseph Belt Railway Company. In the preparation of his appraisal for the first hearing in 1929 he made a thorough study of the City of St. Joseph, including its popula-
[fol. 94] tion, civic improvements, schools, public libraries, fire protection, public utilities, and the labor supply available. He took into consideration the location of the packing houses, the Belt Railway, and the interdependence of the stockyards, the railway, and the packing house industries. He ascertained the volume and [illegible] of livestock passing through the stockyards, the volume of business passing through the banks, and the payroll of employees of the various industries. He stated that the land adjoining does not make the value of the stockyards property, but that the value of the stockyards and allied interests established the value of the adjoining land. He further stated that, in his opinion, it is not fair and just to these properties to gauge and establish the values of these lands by the price at which unimproved adjacent real estate can be purchased. He stated that he had not taken values as reflected by sales and literally applied them to the adjoining land, but had considered them altogether with many other things which were taken into consideration before reaching the final unit value. He stated that the three properties, that is, the railroad, stockyards, and packing house properties are the only properties of similar character in that section and that in valuing the property of respondent he had given it the value of the only adjacent similar land, that is the packing house land and the railroad property. In this connection he called attention to a lease made by respondent to the St. Joseph Belt Railway Company, a subsidiary corporation, wherein the rental is on the basis of yielding a 6 per cent return on a value of 30 cents per square foot. The record shows that this witness made the appraisal of the property leased, upon which the consideration in the lease

was predicated. In arriving at the appraised value of respondent's property, the witness stated that he had arrived [fol. 95] at his conclusion of the value of the land based on all things considered, plus years of experience in the real estate business. He stated that there were many other elements which go to make up market values but that the all-persuading argument is the adaptability of a particular tract for its intended use, and that property is only valuable because it produces an income, or returns a profit, or serves a purpose. He further stated that the proper method in valuing a piece of property is to consider it for its highest and best use and that he considered the land of the St. Joseph Stockyards to be so used at the present time.

99. Frank N. Atkinson, who was called by the respondent in the first hearing and subscribed to the joint appraisal submitted by Spratt and himself, had been in the real estate business in St. Joseph for forty-three years. He was the first president of the Real Estate Exchange in St. Joseph and served as city postmaster for many years. He operated a strictly real estate business, but for a number of years had loaned money on real estate. In addition to acting as an agent in connection with his real estate business he had also acted as a broker and had constructed and sold homes in different locations in the city. In connection with two other real estate men he purchased the holdings of the St. Joseph Terminal Company. He acted as agent for the St. Joseph Light and Power Company and served with Spratt for the city in connection with the condemnation proceedings involving the city hall property and the park and boulevard system. With Spratt he appraised the land owned by the St. Joseph Gas Works and the St. Joseph Water Company and served with Spratt in the appraisal of the real estate holdings of the Union Terminal and the six trunk lines entering St. Joseph. He has specialized in fur- [fol. 96] nishing expert opinions and advice on the value of St. Joseph real property. He stated that there can be no invariable formula in the appraisal of real property and that he feels that the value of real property depends upon what is in the mind of the prospective purchaser when he purchases the property. As to his method in arriving at value he stated: "In summing up, with my conscience as my guide and depending on my general knowledge, and

considering the importance, value and magnitude of these great going concerns, and realizing that no exact formula can be laid down in the matter of real estate values, I feel that for the specific purposes of the stockyards' upbuilding and further development and expansion, no greater setting on the face of the earth will or can be found in St. Joseph or elsewhere comparable to the land on which these plants are located."

100. Mr. Theo. J. Quinn, a witness called by the respondent, who submitted an appraisal at the last hearing, has lived in St. Joseph for about twenty-eight years and has been in the brokerage end of the real estate business since 1922. Prior to that time he was employed by the Empire Trust Company, and in his employment was familiar with the loans made by that company. Since about 1925 he has been operating independently with Robert E. Gardner under the firm name of Gardner and Quinn. His business consists of handling residential, retail, industrial and subdivision properties, acting as a broker. In addition the firm has an insurance business. The firm has had charge of purchasing sites for filling stations operated by the Shell Oil Company, the Mid-Continent Petroleum Corporation, the Independent Oil Company, the Skelly Oil Company, and the Sinclair Refining Company. Quinn is a member of the Real Estate Board and has served at various times on its appraisal committee. He shared in the appraisal of some [fol. 97] $200,000 worth of property taken over by the city for school purposes and appraised the Sinclair Refining Company's real estate in 1929. He was employed by the owners of property which was taken by the State of Missouri for highway purposes and has done appraisal work for building and loan associations. He acted on a committee which appraised the property of the St. Joseph Light, Heat and Power Company. He has sold properties in the stockyards district near South St. Joseph. The Street Railway Company's properties which he assisted in appraising extend into that district. In making the appraisal of respondent's property he spent approximately a month. He visited each of the zones, noted the character of the land and the character of the uses to which each was put, and also the improvements thereon. He gave consideration to accessibility for vehicular traffic and also the accessibility afforded

by the Street Railway Company, railroads and bus service. In company with Spratt and Zelinski, he made a check of the 147 transfers previously referred to and inspected the premises covered by practically every one of them. In arriving at the value he gave consideration to railroads entering St. Joseph, the highway system the population of the city, civic improvements, protection afforded by fire and police departments of the city, utilities serving the city, which elements he stated are wide forces behind the stabilizing and maintenance of values. He also gave consideration to the volume of receipts of the respondent company, the intensity and use of the land, and the fact that the services of this company are an integral part of a coordinated service rendered by the St. Joseph Belt Railway and the fifth largest packing center in America.

[fol. 98] Zone A

101. At the time of the second appraisal, in the year 1932, Mack and Atkinson had died. In that appraisal Zelinski found this zone to have a value of $5,000 per acre or approximately 11.5 cents per square foot. Spratt was of the opinion that it was then worth 26 cents. Quinn appraised it at 35 cents per square foot. The record indicates that each of the witnesses was seeking to place upon this zone normal values, not depression or stagnation prices. The variations in the unit values arrived at are so wide as to lead to the conclusion that the cause lies in the methods employed rather than in the usual variance of judgment or opinion.

102. The appraisal of the witness Quinn seems to rest upon general judgment rather than an analysis of the sales and other transactions in real property similar and adjacent to Zone A. Such also was the case of the appraisals of the witnesses Mack and Atkinson in the year 1929. The witnesses Spratt and Zelinski had had more experience in the appraisal of land for rate making purposes than any of the others. As between those two Spratt had the advantage of long residence in the community where the land lies and Zelinski the advantage of a more thorough training and experience in the principles of public utility land appraisal. Both of them relied upon the same general group of property transfers and transactions in the vicinity, though it is

probable that in arriving at their conclusions they gave different relative weights to the same transfers. The testimony of Zelinski reveals a more scientific analysis of such transfers and transactions and a more accurate relation of them to the value found for Zone A than does that of Spratt. In determining his value of Zone A, Zelinski stated that he gave weight to five sales or groups of sales, which in [fol. 99] his opinion had bearing in reflecting the value of that zone. One of these, known as Sale 5, conveyed 31/100 of an acre to the St. Joseph Warehouse and Cold Storage Company, whose plant lies directly west of part of Zone A. This small tract lies immediately west of the plant of the purchasing company, and was acquired in 1919 at the rate of $5,000 per acre, or approximately 11.5 cents per square foot, for expansion purposes. While there was some relationship existing between the grantor and grantee the circumstances were such as to lead Zelinski to believe that the purchase price reflected the real value. The second sale, known as No. 10, consists of a tract of land formerly a part of respondent's Zone N and located north of Lake Road at the intersection of Packers Avenue. It surrounds on the west, north and east the portion of Zone N which respondent now uses as a manure dump and lies a short distance north of the northwest corner of Zone A. It contains 4.2 acres and was purchased in 1930 by the Union Terminal Railway Company from respondent. The consideration was $3,000 per acre or a little less than 7 cents per square foot. In 1929, 1.2 acres of this tract was leased to the Shell Petroleum Corporation for an annual rental which, capitalized at 7 per cent, represents a value of $3,000 per acre. In the same year another portion of it was leased to the Painter Oil Company at a rental which, so capitalized, amounts to a value of $4,280 per acre or less than 10 cents per square foot. The third group consists of Sale 11 to the Larabee Flour Mills Corporation, Sale 12, from respondent to an agent of the Union Terminal Railway Company and Sale 14, from such agent to the Larabee Flour Mills Corporation, the latter covering a portion of the land heretofore included in Sale 12. These three tracts, 11, 12 and 14 lie immediately west of respondent's Zone N, 11 being the most [fol. 100] northerly of the tracts and 12 the most southerly and nearest to Zone A. With this group the witness considered 3 and 4 which lie immediately west of 11 and 14 and

constitute the site of the St. Joseph public elevators. Sale 11 consisting of 5.74 acres was made in 1918 at the price of $2,000 per acre or 4.6 cents per square foot. Sale 12 involved the conveyance in 1919 of 11.765 acres at $2,000 per acre. Sale 14 occurred in 1920, the consideration being $3,500 per acre or approximately 8 cents per square foot. Sales 3 and 4 containing slightly more than one acre were made in 1920 at the price of $3,000 per acre or a little less than 7 cents per square foot.

103. The group of sales spoken of in the record as Grain Belt Mills sales and designated at 6, 7 and 8 consists of three tracts of land lying approximately 800 or 900 feet west of the northerly part of the cattle division in Zone A. Sale 6 consists of 4.67 acres purchased by the Grain Belt Mills at $2,660 per acre or approximately 6.1 cents per square foot. Sale 7 consists of one-half acre adjoining sale 6. It was purchased by the same company in 1922, at $3,676 per acre or approximately 8.4 cents per square foot. Sale 8 consists of .92 of an acre adjoining Sale 7 purchased by the Union Terminal Railway Company for the purpose of straightening out its right-of-way. The consideration was $5,255 per acre or approximately 12 cents per square foot. The Famo Mills sales designated as 34, 35, 38, 39, 40 and 41 represent the purchase of several lots located within the corporate limits of the city of St. Joseph and having frontage on both the Chicago, Rock Island and Pacific Railway tracks and Cherokee Street, which is one of the principal retail streets of South St. Joseph. These lots are east of the Exchange Building and the cattle division in Zone A and separated from that zone by the tracks of the Belt Rail-
[fol. 101] way and three trunk line carriers. The consideration for these sales varies from 4 cents per square foot to 28.2 cents, the weighted average being 15.6 cents. In connection with these sales the purchaser was able to vacate without cost, alleys located between these lots. The area obtained was greater than that paid for. Each of these lots is situated along the right-of-way of the Chicago, Rock Island and Pacific Railway and has the benefit of trackage without expense for industrial track right-of-way. An analysis of the evidence with respect to sales considered by Zelinski, including a comparison of the advantages and disadvantages of the land concerned with those of the land

in Zone A, leads to the conclusion that these sales substantially support the value found by him for Zone A.

104. Spratt's first experience in the appraisal of lands of respondent and its allied companies was when, subsequent to the year 1923, he appraised respondent's lands occupied by the St. Joseph Belt Railway as a right-of-way. This he did by means of comparison with respondent's adjoining land used for stockyard purposes, but he obtained the value of the last-mentioned lands by capitalizing at 6 per cent the income derived by respondent from the conduct of a stockyard on those lands at the prevailing stockyard rates. Thereupon respondent, whose executive officers were the same as the railway company's, leased the right-of-way to the railway company, its wholly owned subsidiary, at a rental amounting to 6 per cent per annum of the value so found by Spratt. In 1929 Spratt appraised Zone A at 30 cents per square foot, based upon the valuation theretofore found for the railway right-of-way, and the lease made by respondent covering that right-of-way. In 1929 respondent and the railway company entered into an arrangement whereby the title to the right-of-way of the [fol. 102] latter was transferred from respondent's books to those of the railway at a stated consideration which was the same as the appraised value placed upon the right-of-way by Spratt as above described. In the year 1929 respondent in an arm's length transaction sold to outside interests the entire capital stock of the railway company. But when Spratt in the year 1932 came to make a reappraisal of respondent's Zone A he relied upon the consideration stated in the mere paper transaction between respondent and its subsidiary, the railway company, rather than upon the later sale to outside parties. He stated that both of these transactions were considered and both corroborated his value of 30 cents found in 1929 and of 26 cents found in 1932. It is apparent from this and other of his testimony that his later value of 26 cents was merely a scaling down of his former finding of 30 cents, due to a decrease brought about by economic changes. However, on cross examination this witness repeatedly evaded the request that he show by analysis how the sale of the railway to outside interests substantiated his values either of 30 cents or 26 cents per square foot.

105. While a considerable portion of the railway right-of-way land lies north and west of the packing plants and is not of as high unit value as the lands in Zone A, another considerable portion of it lies between Zone A and the southern portion of the City of St. Joseph and is more valuable than the land in Zone A when that zone is considered as a whole. Moreover, Spratt regarded the value of the right-of-way land as closely intertwined with that of Zone A. Analysis of the only arm's length transaction which involves this right-of-way land shows that it supports neither the valuation placed on Zone A by Spratt nor by Zelinski, but a valuation falling between those two.

[fol. 103] 106. In the year 1930 there was pending before the Interstate Commerce Commission a recapture proceeding under the Transportation Act, which proceeding was known as Finance Docket No. 3906, Excess Income of St. Joseph Belt Railway Company. In this proceeding, Spratt testified that all the land occupied by the St. Joseph Belt Railway Company was of the value of 30 cents per square foot or a total of $1,195,591 for the 91.49 acres so occupied. The other elements of value, namely structural property, going concern and other intangibles, were appraised and testified to respectively by the same witnesses who appraised and testified for respondent in the instant proceeding. Based on the testimony of Spratt and these other witnesses the Belt Railway Company contended that, including a working capital of $44,000 computed by a witness for the Interstate Commerce Commission, the value of the railway for rate making purposes in the year 1928 was $2,500,342. In the fall of the year 1929 respondent sold to outside interests the entire properties and the business of the St. Joseph Belt Railway Company. The consideration was $1,500,000. The transfer of ownership was affected by a transfer of the entire capital stock, there being no other securities outstanding. The actual sale of the property was for a price which was 60 per cent of its value as appraised by Spratt and the other witnesses on behalf of the railway company in the proceeding before the Interstate Commerce Commission. There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements

of the property. It is reasonable to conclude that the sales value of the land was 18 cents per square foot, that is 60 per cent of the 30 cents per square foot estimated by Spratt.

[fol. 104] 107. All of the witnesses who testified in this proceeding relative to land values were in agreement that the highest and best use to which the lands in Zones A and B could be put was for stockyard purposes. It follows, therefore, that considered as land only, without reflecting in value the income of the business now being conducted upon them, their highest value arises from their adaptability to and availability for stockyard uses. The testimony of Spratt shows that it was his opinion that from the standpoint of availability and adaptability, as distinguished from actual present use and the income from such use, the lands in Zones A and B each had as of 1929 a value of 15 cents per square foot and as of the time of the last hearing, 13 cents. He said at the first hearing: "I think that the land in the stockyards is used today for its highest and best purposes * * *. My difference of 15 cents per square foot in the valuation of tract B is because it has not been brought into its highest and best use. When it has been brought into that use I think it will be worth just as much as the land in tract A. If respondent were expanding the hog pens over onto Zone B, I would think so much of that tract as the pens covered would immediately become worth 30 cents per square foot * * *. I do not, of course, include the value of superstructures, but I think that having superstructures upon the land increases the value of the land * * *. I did not specifically, absolutely, and by itself use the net income of the stockyards company in arriving at my valuation of the stockyards property * * *."

108. At the last hearing he said: "There has not been any change in my views as to the factors which govern or affect land values. There has been no change in my views as to the factors which govern and affect the values of land of respondent except as noted in my report, the [fol. 105] general depression * * *. As a developed piece of land, I know it (Zone A) is more valuable than any undeveloped piece of ground * * *. The use of any land depends upon and governs its value. That is true of all land. Use of land makes value, and availability to use makes value. Availability to use, and on top of that actual use, makes value * * *."

109. From the foregoing analysis of the qualifications and testimony of the respective land valuation witnesses it is apparent that there is before the Secretary for consideration, with respect to Zone A, Mack's 1929 value of 35 cents per square foot for stockyard uses, 20 cents for other uses; and Quinn's 1933 value of 35 cents per square foot, each of which constitutes an opinion from general information and not supported by analysis. Zelinski's valuation of 11½ cents is also before the Secretary and is well supported by analysis of transactions in adjacent and similar lands, but fails to give consideration to the most recent sale of the most similar land, the right-of-way of the Belt Railway. The Secretary also has for consideration Spratt's asserted value of 30 cents in 1929 and the complete approval thereof by Atkinson, which approval Atkinson did not attempt to support by analysis, and Spratt's 1933 value of 26 cents per square foot which represents merely a scaling down of his 1929 value because of conditions brought about by the current depression. There is, also, before the Secretary the clear opinion of Spratt that with respect to its adaptability to and availability for its highest and best use there is no difference in value between Zones A and B and that in those aspects each of these zones was worth 15 cents per square foot, 1929, and 13 cents in 1933. In addition there is the actual arm's length sale in 1929 of the Belt Railway right-of-way lands abutting Zones A and B. While the price paid for the [fol. 106] entire property of the Belt Railway Company cannot be apportioned with mathematical accuracy as between land, structures and intangibles, the analysis heretofore made indicates that the use of 18 cents per square foot as the sale price of the land is not unfair.

110. If the 18¢ sale price of 1929 be decreased in the same ratio as Spratt decreased his appraisal of 30¢ in 1929 the figure of 15.6¢ per square foot is obtained. Weighing all of these things and all the facts of record the conclusion is reached and it is found, that the fair value for rate making purposes of respondent's land in Zones A and B heretofore found to be used and useful is 16¢ per square foot; it is further found that this value does not represent depression or stagnation value but constitutes the reasonable normal value of the land giving weight to values exist-

ing immediately preceding as well as those existing during the present depression.

111. It is found, therefore, that the fair value as aforesaid of the total used and useful land in Zones A and B, respectively, is as follows:

Zone A	3,003,973 square feet	$480,635.68
Zone B	415,146 " "	66,423.36
Total	3,419,119 square feet	$547,059.04

Zone C

112. The areas within this zone which heretofore have been found to be used and useful consist of 108,185 square feet in the extreme southeast portion thereof, 17,850 square feet in the western portion and a narrow strip containing 37,167 square feet in the extreme south central portion and abutting the right-of-way and tracks of the Belt Railway or a total of 163,202 square feet out of a total zone area of 1,073,972 square feet.

[fol. 107] 113. The unit values placed on this zone by each of the land valuation witnesses considered the zone as a whole. In the first hearing, each of the three witnesses placed upon the zone a square foot value of 15¢. In the second hearing Zelinski appraised this zone at 9.02¢, Spratt 11¢, Quinn 12.5¢.

114. The most applicable land transaction in point of time, proximity and similarity is that designated in the record Sale 10. It involved a conveyance in 1930 by respondent to the Union Terminal Railway Company of 4.2 acres of land immediately across Lake Road from the western portion of Zone C. The consideration was $3,000 per acre or approximately 7¢ per square foot. According to the theory that plottage and assembly lends the large tracts of land a greater unit value than is possessed by smaller tracts, the approximately 25 acres in Zone C would have a greater unit value than the approximately 4 acres in Sale 10. But applying the same principle would produce the result that the three used and useful portions of Zone C would have a less unit value than the Zone as a whole. On the contrary, the position is here taken that the portions of Zone C which are found to be used and useful have a

somewhat higher unit value than the zone as a whole. Among the reasons for this are that they are smaller in area and also are more favorably located than some other portions of the zone. While, therefore, the most applicable actual land transaction comes more nearly to supporting Zelinski's value of 9.02¢ per square foot for the Zone as a whole than the value determined by any of the other witnesses, it is found that the fair value for rate making purposes of the three used and useful portions is 10¢ per square foot or a total of $16,225.20.

[fol. 108] Zone N

115. The only land in Zone N which has been found to be used and useful is the 36,600 square feet devoted to manure disposal purposes. That area is surrounded on three sides by the land involved in Sale 10, heretofore discussed. At the first hearing, Mack was of opinion that Zone N as a whole was worth 15¢ per square foot while Spratt and Atkinson placed upon the zone a square foot value of approximately 8¢. At the second hearing, Zelinski and Spratt valued the zone as a whole at $3,000 per acre or slightly less than 7¢ per square foot. Quinn was of opinion that it was worth 8¢. Inasmuch as the consideration for Sale 10 was $3,000 per acre and it is the most applicable sale in time, proximity and similarity, it would appear that Zelinski and Spratt gave controlling consideration thereto. Whether or not that be true as to the zone as a whole, it is difficult to conceive for this small manure disposal area a value different from the exactly similar tract which lies on three sides of it. Therefore, its value for rate making purposes is found to be 7¢ per square foot or $2,562.00 for the area as a whole.

Zone E

116. While there is some testimony to the effect that this zone is being held as a site for a possible new packing plant, the remoteness of that possibility, as indicated by the record as a whole, is such that it is not reasonable to conclude that there is a sufficient probability of that use to render that its highest and best use. From all the circumstances, the conclusion is reached that, like Zones A, B and C, its highest and best probable use is for stockyard purposes. On that basis, it becomes pertinent to compare it

with those zones. The principal differences between it and [fol. 109] Zones A and B are its greater remoteness from public highways and the fact that those two zones lie between the Belt Railroad and both of the packing plants in such a way that, during the marketing process, livestock moves naturally from the rail-unloading docks to both of the packing plants over the shortest dimension of those zones. While Zone E actually adjoins Zone B, it seems more nearly similar to Zone C than it does either to Zone A or Zone B, when its value is considered from the standpoint of stockyard use. Though Zone C has much greater accessibility to public streets than has Zone E, the latter lies within the ring of the Belt Railway and the former without that ring. Use of Zone C for stockyard purposes would necessitate operating across several tracks of the Belt Railway in order to reach the packing plants. A former general manager of respondent's stockyard was of the opinion that so to do would not constitute good management. Weighing these respective advantages and disadvantages, it would appear that Zones C and E, taken as a whole, have approximately the same value. However, the land valuation witnesses were not in agreement as to this. Zelinski placed upon Zone E a value of 7¢ per square foot, which was 2.05¢ less than he put on Zone C. Quinn thought E was worth 10¢ per square foot, or 2.50¢ less than C.

117. Spratt considered each to be worth 11¢ at the second hearing and 15¢ at the first. Atkinson believed both to have a value of 15¢ and Mack placed upon E a worth of 25¢ as compared to 15¢ for C. The opinions of Spratt and Atkinson in this regard appear to be better founded than those of Zelinski, Quinn and Mack. The comparative area of Zone E to be used and useful land of Zone C does not vary sufficiently to warrant a finding of a less unit value with respect to the former. Considering the respective [fol. 110] values placed on Zone E by each of the valuation witnesses, together with the facts above mentioned, it is found that the value for rate making purposes of the land in that Zone is 10¢ per square foot or $44,792.70 for the 447,927 square feet in the zone.

Zone 1

118. In 1929, Mack was of opinion that this zone as a whole had a unit value of 95¢ per square foot, while Spratt

and Atkinson believed it to be worth 40¢. At the time of the last hearing, Spratt had reduced his valuation to 35¢ but Zelinski and Quinn appraised the land at 50¢. Considering that the used and useful property in this zone fronts on Illinois Avenue in the main retail district of South St. Joseph, its value for rate making purposes is found to be 50¢ per square foot or $2,958.50 for the 5,917 square feet of used and useful land in the zone.

Zone 2.

119. This zone is separated from Illinois Avenue by Zone 1 and property situated similarly to that zone. It, therefore, does not constitute a part of what may be considered the retail district of South St. Joseph. In 1929, Spratt and Atkinson placed on it a value of 18¢ a square foot. By reason of the fact that Mack placed an average value on Zones 1, 2 and 3, considered as one tract, it is impracticable to determine what he deemed Zone 2 to be worth, when segregated. At the time of the last hearing, Spratt was of opinion that the land in Zone 2 was worth 12¢ per square foot while Zelinski and Quinn believed its value to be 13¢. The fair value for rate making purposes of the used and useful property in this zone is found to be 13¢ per square foot or $17,804.28 for the 136,956 square feet thereof.

[fol. 111] Zone 3

120. The used and useful land in this zone lies back of Zone 2 and therefore quite remote from the retail district of South St. Joseph. In 1929, Spratt and Atkinson believed it to be worth 8¢ per square foot. For the reason stated in connection with Zone 2, it is not practicable to determine Mack's idea of its value. At the time of the last hearing, Quinn valued it at 10¢ per square foot, Zelinski at 7¢ and Spratt at 6¢. The used and useful land in this zone contains about one-third of the area of the entire zone. The remaining two-thirds lie yet more remote from the retail district of South St. Joseph, where the highest values prevail. Therefore, while the evidence convinces that Zelinski's average of 7¢ per square foot for the zone as a whole is correct, the used and useful portion of the zone is found to have, for rate making purposes, a value of 8¢ per square foot or $16,051.20 for the 200,640 square feet therein.

Summary of Value of Used and Useful Land

121. A summary of the values of the land heretofore found to be used and useful is as follows:

Zone	Square feet	Rate per square feet	Amount
A	3,003,973	0.16	$480,635.68
B	415,146	0.16	66,423.36
C	163,202	0.10	16,320.20
E	447,927	0.10	44,792.70
N	36,600	0.07	2,562.00
1	5,917	0.50	2,958.50
2	136,956	0.13	17,804.20
3	200,640	0.08	16,051.20
Total	4,410,361		$647,547.84

[fol. 112]

V

Value of Structures

Cost of Reproduction New

122. In preparation for the first hearing in this proceeding, respondent's structural property was inventoried and appraised independently by two duly qualified engineers, namely, Hermann C. Henrici, employed by the Government, and S. F. Kosters, employed by the respondent.

123. Henrici inventoried the property as of August, 1927. For the first hearing he, in effect, brought this inventory up to June 30, 1929, by including in the appraisal the book value of additions and betterments made between the inventory and appraisal dates. Similarly, for the second hearing, he brought the inventory up to August 1, 1932. Kosters inventoried the property as of June 30, 1929, and brought his inventory up to August 1, 1932. At each of the hearings the inventories of the respective engineers were substantially in agreement.

Materials and Labor

124. At the first hearing cost of reproduction new, before general overheads, was in Henrici's appraisal $2,673,529 and in Kosters' $2,826,641, the difference being $153,112. They recommended that the Secretary adopt the mean between their appraisals.

125. The respective appraisals of Henrici and Kosters at the last hearing are not in form to be compared without certain explanations. Originally Henrici inventoried respondent's structural property as of August 1, 1927, and Kosters as of June 30, 1929. With respect to their last appraisals, [fol. 113] they agreed upon August 1, 1932, as, what is referred to as, the "cut-off date." That is to say, they agreed that there should be included in their appraisals the value of all of respondent's structural property existing at that time. To accomplish this, each added to his former appraisal the value, as shown on respondent's books, of additions and betterments made to the property since the original inventories. In principle, they followed the same course in doing this but the practical methods employed were sufficiently different to cause some variation between the results obtained. To his total costs of reproduction new found upon the 1927 inventory, including general overheads, Henrici added, for additions and betterments, the total book figure of $128,041, which, however, did not include the "new stock viaduct." He also included in his appraisal (Government Exhibit 114) a detailed list of the items composing the total of $128,041. Kosters scattered the value of the additions and betterments throughout his appraisal (Respondent's Exhibits 111 and 111a), including each item with the unit of property to which it belonged. The fact that the original inventories were as of different dates precludes any detailed comparison to determine whether every item included by one engineer also appears in the inventory of the other. Henrici's failure to include the "new stock viaduct" or its value was due to the fact that, though erected prior to August 1, 1932, its cost did not, at that time, appear on respondent's books and Henrici feared that in the event of revising the appraisal to some future date, duplications would result from not adhering to the "cut-off date." Kosters included the "new stock viaduct" at book value, namely, $18,610. Kosters' method of handling the additions and betterments has the effect of including them in the base for determining general overheads, while Henrici's method does not. Also, Kosters' method slightly increases [fol. 114] the composite condition per cent for determining the depreciated cost of general overheads over the figure arrived at by following Henrici's method, but Kosters depreciates the additions and betterments and Henrici does not. Moreover, Henrici computed what he called "con-

struction overheads," (Kosters designated them "miscellaneous structural costs,") applicable to each item of the property and, as the appraisal progressed, added them to the labor and material costs of such item. Kosters omitted them from the individual items, but added them in lump sum as one of the overheads. All of this renders impracticable, if not impossible, any mathematical comparison of the two appraisals, in detail. However, the two engineers compared the results and reached the conclusion that they were in substantial agreement, both as to cost of reproduction new of labor and materials and as to the total cost of reproduction new, including general overheads. The first figures they reached were what they designated "total cost of materials and labor as of August 1, 1932, without any overheads, either construction or general," and were as follows:

Henrici's appraisal	$2,051,681
Kosters' appraisal	2,200,302

The first figure was found as follows:

From the figure "Total before General Overheads (Revised Appraisal 1927, with betterments)" appearing in Henrici's appraisal (Gov. Ex. 114) and amounting to	$2,209,458
There was deducted the aggregate of the "construction overheads"	285,818
Leaving	$1,923,640
To which was added Additions and Betterments 1927 to 1932	128,041
Making a total of	$2,051,681

[fol. 115] The second figure is Kosters' "Total Material and Labor" (Resp. Ex. 111, p. 5) and was made up as follows:

Material and labor cost of reproduction new as of Kosters' total 1929 inventory	$2,139,582
To which was added Kosters' additions and Betterments 1929 to 1932	60,720
Making a total of	$2,200,302

They, therefore, found themselves $148,621 apart at this point. The difference, they said, was 7.24 per cent. of Henrici's total and 6.75 per cent of Kosters' total and was "made up of a multitude of differences in inventory and appraisal," the reason for which it might take them several months to determine. But Kosters' figure of $2,200,302 includes the "new stock viaduct" (or "Illinois and Packers Avenue Viaduct") at a book cost of $18,610, while Henrici's $2,051,681 does not. Adding this to Henrici's figure we have, for comparison:

Henrici's appraisal	$2,070,291
Kosters' appraisal	2,200,302
A difference of	$130,011

The engineers continued their comparisons to include the various overheads of all kinds which each included in his appraisal under whatsoever name. The resultant figures were:

Henrici's appraisal	$2,811,037
Kosters' appraisal	3,066,672

Of these they said:

The difference in the cost of reproduction new of the property, as determined by the respective appraisals is $255,635. The difference is 9.09 per cent of the U. S. appraisal and 8.34 per cent of the Stone and Webster appraisal. These are again in substantial agreement.
[fol. 116] Again adding the "new stock viaduct" $18,610 to Henrici's figure reduces the difference to $237,025. The result is that, as to the cost of reproduction new of structural property, neither engineer attributes error to the other. The Secretary is, therefore, to this extent, in the position of having a choice between two appraisals neither of which is erroneous. Respondent urges that, in such circumstances, the only fair course is to adopt a mean between the two. In this, however, it overlooks the impracticability of such a course in view of the necessity of the elimination of the value of non-useful property and of the other adjustments incident thereto. For convenience in such eliminations, Henrici's estimate, which lends itself more readily thereto, is used.

126. Inasmuch as the additions and betterments, including the "newstock viaduct" are to be included at actual cost undepreciated, and they occurred during the period 1927 to 1932, which is the period from which respondent's reasonable operating expenses chiefly are determined, it follows that all overheads applicable to the additions and betterments either have been included in the additions and betterments, as shown on respondent's books, or else have been left in the general operating expenses. In either event such overheads will be included in the final determination herein of reasonable rates. Moreover, it is impracticable to segregate the overheads which are buried in the book figures of additions and betterments and find the actual cost of the labor and materials therein. For these reasons, there are omitted from the separate finding of cost of reproduction new of labor and materials the cost of such of those items as are contained in the additions and betterments. The remaining labor and material costs, after making the eliminations necessitated by the exclusion of non-useful property, [fol. 117] are found to have a cost of reproduction new of $2,022,554, according to the following table:

Cost of Reproduction New as of August 1, 1932, of Labor and Materials, Including Construction Overheads, of Structures Inventoried as of 1927.

Item	Total 1927 inventory	Non-used and useful property eliminated	Used and useful property included in rate base
Exchange building area	$373,296		$373,296
Cattle division	621,274		621,274
Sheep division	125,731		125,731
Hog division	431,053		431,053
South of hog division	59,982		59,982
Southern cattle division	41,696		41,696
Company stable area	13,727		13,727
Horse and Mule division	142,295	$1,025	141,270
General items	32,567	9,376	23,191
Miscellaneous items	367,837	176,503	191,334
	$2,209,458	$186,904	$2,022,554

The following table shows in detail the items composing the above eliminations of $136,904:

Item	Elimination		Amount
Horse and mule division...	Blacksmith shop.....		$1,025
General items.....	Part of foot subway not on respondent's land.....		9,376
Miscellaneous items.....	Brick garage on railway	$3,550	
	Exchange avenue paving	1,144	
	Lake road paving	9,158	
	Transit House hotel	132,726	
	Harness shop	11,932	
	Journal building	17,993	
			176,503
Total.....			$186,904

General Overheads

127. In order to arrive at the cost of reproduction new of respondent's property, it is necessary to add certain general overhead costs to the cost of material and labor above found. These usually are arrived at by the calculation of [fol. 118] percentages of certain other costs. The item which customarily is considered as the first general overhead is the so-called "Omissions and contingencies." This is, however, not a true general overhead but rather a margin to take care of unavoidable errors which creep into the complicated processes of appraisal and to cover contingencies which may arise in the reproduction of a complex property, and which have not been anticipated by the appraisal engineer. In this proceeding both engineers recommended that this item be computed as 5% of the cost of reproduction new of materials and labor and each so calculated it in the appraisal which he prepared. A difference in the set-up of those appraisals respectively brought about in actual practice a difference in principle in the computation of the omissions and contingencies item. Because Henrici integrated his construction overheads with other costs of materials and labor as he built up his appraisal, he calculated the omissions and contingencies as 5% of a total, which was $285,818.00 greater than the base which he would have used had he employed Kosters' method, and Kosters computed this item upon a base which was about $288,000 less than the base he would have used had he employed Henrici's method. Use of the method employed by Henrici increases the amount of the allowance for omissions and con-

tingencies and, therefore, of the cost found for the reproduction of the structures. Inasmuch as the item is of a kind which must be computed arbitrarily, there is no particular reason for following either of the methods above discussed, in preference to the other. However, since, for purposes of convenience, Henrici's appraisal of the cost of labor and materials has been adopted, his method of computing omissions and contingencies also is accepted. There- [fol. 119] fore, it is found that, in determining the cost of reproduction new of respondent's structural property, there should be included an item of $101,128 to cover omissions and contingencies. This item is 5 per cent of the $2,022,554 heretofore found to be the cost of reproduction new of labor and materials, including construction overheads, of respondent's used and useful structures. This item for omissions and contingencies is added to the amount last above mentioned to form a new base of $2,123,682 upon which are calculated certain of the general overheads hereinafter discussed.

128. The engineers were in agreement that in the determination of cost of reproduction new there should be included items to cover general salaries and expenses, legal expenses, and the services of architects and engineers; and that these allowances should be computed as 2 per cent, 1 per cent and 5 per cent, respectively, or a total of 8 per cent. But it is not clear whether the respective engineers computed them upon bases arrived at in the same manner or even recommended that they be so computed. They are here calculated upon the base of $2,123,682 last above mentioned, resulting in the following amounts to be included in the cost of reproduction new:

General salaries and expenses	$42,474
Legal expenses	21,237
Architects and engineers	106,184
Total	$169,895

129. In respect to the general overhead which is designated by Kosters as "Workmen's Compensation and Public Liability Insurance," and by Henrici as "Liability Insurance," the former would calculate it, when applied to the entire structural property, as 5.9% of labor amounting to [fol. 120] $709,300, or $41,849, whereas the latter would

compute it as 6.1% of his labor cost of $836,305 or $51,015.00. This difference in the base used is explained by the difference of method employed in handling construction overheads, but the difference in percentage is unaccounted for. Inasmuch as other aspects of Henrici's appraisal have been adopted, the same course is followed in respect to this item and the amount of $46,485 which is found to be properly includable in the cost of reproduction new of respondent's property to cover the item of liability insurance, is arrived at by computing 6.1% of Henrici's labor cost of reproducing the used and useful structures, namely, $762,048.00.

130. Both engineers used one-half of one per cent as the rate at which to calculate the allowance to be included in cost of reproduction new to cover the item which was designated by Kosters "Fire and Tornado Insurance" and by Henrici "Fire Insurance," but the respective bases to which they applied this percentage were not arrived at in the same manner. The employment of Kosters' method would result in a finding of $11,002.00 to cover this item if all structures were regarded as used and useful. On the same hypothesis, the use of Henrici's method would result in a finding of $11,600.00. Henrici's method is here employed and, when applied to the used and useful property, results in the finding that there be included in the cost of reproduction new of respondent's property an item of $10,618 to cover fire and tornado insurance. This item is one-half of one per cent of $2,123,682.00.

131. The item of taxes during the period required to reproduce the structures (which both engineers agreed would be one year) was arrived at quite differently by them. Henrici used the amount actually paid by respondent on its land as well as its structural property. [fol. 121] Kosters calculated the taxes by applying the tax rate to the cost of material and labor. He did not take the taxes actually paid but took the tax rate which was in existence at the time of appraisal. He did not include the taxes on land, but only on structural property. That was because he did not have the land figures. He then broke down the labor and material items, including miscellaneous structural costs, into the classification of rural property and city property, finding the former to be $2,275,874.00 and the latter to be $385,967.00. To the former he

applied one per cent and to the latter 1.8 per cent, and, adding the two results, arrived at $30,846.00 as taxes during construction on all of respondent's structural property. The fault in Kosters' method lies in that it is based on a presumption that respondent would be required to pay, during the construction period, taxes computed by applying a tax rate to Kosters' estimate of the cost of labor and materials including miscellaneous construction costs. This presumption is contrary to the proven fact that, with its property fully constructed and operating, it pays no such tax but one based on a tax appraisal materially less than the above described estimate of Kosters. Henrici's method is in accord with the actual facts and is, therefore, followed in arriving at the item of taxes during construction on the used and useful structures and land. The amount thereof is found to be $18,257.00.

132. At the first and second hearings, engineering witnesses were in agreement that the item of interest during construction should be computed at the rate of 7% per annum for one half of the construction period. At the first hearing, Henrici did not include in the base for calculation of interest during construction any land value. The record at that hearing is not clear as to whether this [fol. 122] was because he did not believe it should be included or only because he did not have the land value to include. It is clear that respondent's engineer considered that the land value should be included in such a base. The order issued as a result of that hearing agreed in principle with respondent's engineer. At the second hearing, both engineers were in agreement that the land value should be included in the base on which interest during construction is calculated, Henrici saying that the reason it was not so included in his appraisal was because he did not have the land value at the time of making up the appraisal. While it is true that interest on land during construction is not an element properly to be added to the present market value of the land on which the structures rest, it is a necessary and inescapable cost of reproduction new of those structures. They cannot be built and then moved to the land they are to occupy. The land must be in possession when the construction is started, which means that money must have been invested in it or a liability

for interest payment incurred. It would be exceedingly unwise to attempt to purchase the land in parcels as construction progresses. In this respect the land differs from materials and labor. Therefore, while interest on the latter is allowed for only one-half of the construction period, on the former it is included for the entire period. This does not mean, however, that interest on all land found to be used and useful is so included. It has reference merely to the land necessary for the construction of the structures. The record in this case indicated that ownership of all lands in Zones 1, 2 and 3 and in Zones A and B, except possibly portions of the feedlots in the latter two zones, would be a prerequisite to the program of reconstruction of the used and useful structures. The record is not [fol. 123] sufficiently definite to warrant the exclusion of any particular part of the feedlots in Zones A and B, or in Zone C. With respect to Zone E, however, there are no buildings upon it and it is clear that its acquisition would be in no way necessary to the beginning or prosecution of a construction program. It is found that there is properly includable in the cost of reproduction new of respondent's structures on item of $125,106 to cover interest during construction. This amount is ascertained by computing interest for six months at the rate of 7 per cent per annum on the $2,368,937 heretofore found to constitute the cost of reproduction new of labor and materials, and all overheads, construction and general, except interest during construction, of respondent's used and useful structures, and interest for one year at 7 per cent per annum on $602,755 being the value of the used and useful land exclusive of Zone E.

133. In addition to the overheads above considered Burnell, an engineering witness for respondent at the first hearing, recommended the allowance of two so-called preconstruction overheads which he designated "Organization" and "Cost of Financing," respectively. At the second hearing, Kosters recommended the allowance of two general overheads designated by these terms. Henrici was of opinion that neither of these so-called overheads should be included.

134. Burnell's organization overhead was practically the cost of persuading oneself that one desired to own a stockyard. Kosters' conception of this item is the cost of obtaining from experts an opinion as to the best site to be purchased and the best layout of structures thereon, together with the cost of consideration of such recommendations and the reaching of a decision by respondent's management. At this time, respondent appears to contend for the inclusion [fol. 124] of the so-called organization overhead on the basis recommended by Kosters rather than that suggested by Burnell. Accordingly, it is so considered. Kosters' view would seem to arise from a confusion of the theory of valuation on the basis of historical costs or prudent investment with that based on cost of reproduction new. It is conceivable that, if, without definite historic data, one were attempting to surmise historical costs or original prudent investment, one might suppose that in the beginning, when there was no stockyard in existence, the promoters thereof would have employed experts to advise them and would have devoted time and research to the determination of the best site and the best plan of structures. But Indianapolis Water Company v. McCardle, 272 U. S. 400, makes clear that in ascertaining cost of reproduction new, the exact existent property must be reproduced, notwithstanding that a better property, from an operating standpoint, could be produced at less cost. Being, therefore, bound to reproduce the identical structures upon their exact site it is of no avail to employ in its reproduction experts to advise as to other sites or other plans of construction, or for management to give consideration to those matters. Moreover, there is no evidence that such costs were ever incurred. Also Kosters was of opinion that the site of the stockyard is the best that could be selected in St. Joseph or its vicinity and that if the ideal stockyard were ever constructed it would be built exactly as is respondent's. For these reasons and others which suggest themselves from the record it is found that the so-called organization costs are not properly includable, either as a cost of reproduction new of the structures or as a part of the rate base on any other ground.

135. Both Burnell's and Kosters' costs of financing seem [fol. 125] to have been based on the thought that in the sell-

ing of respondent's securities, from the sale of which money was obtained wherewith to buy land and build structures, brokerage fees or equivalent expenses would be incurred. While there is some evidence of a refunding issue of respondent's bonds having been sold at a discount, there is none as to brokerage actually having been paid in the sale of its securities or of the original issues of its securities having been sold at a discount. Whether or not this so-called cost should be included in the rate base, it is clear that the actual cost of reproduction of a property is in no wise changed by the amount of expense incurred in obtaining the money wherewith to pay for such reconstruction and that, therefore, such expense is in no sense a reproduction cost. Neither should it be included in the rate base at all. The law guarantees to the present owners of the property a fair return on the fair value of that property wholly regardless of the cost to them of acquiring it. This is illustrated in this order by the fact that, though in the acquisition of the so-called new stock viaduct, respondent paid only one-third of its cost, it is included in the rate base at its entire cost. If, therefore, in order to acquire the property as a whole, the owners of the respondent corporation had to contribute more money than was actually invested in the property, in order that a portion of that money might be used to pay brokerage fees or commissions, it does not entitle them to have such excess included in the computation of the fair value of the property. For these and other reasons apparent from the record it is found that there should not be included in the rate base any allowance to cover the so-called cost of financing, whether that cost be conceived to be a fee for brokerage, a discount allowed in the sale of securities, or a composite of the two.

[fol. 126] 136. A summary of the cost of reproduction new of respondent's structures is as follows:

Cost of reproduction new of Materials and Labor, including construction overheads but not additions and betterments or new stock viaduct	$2,022,554
Omissions and contingencies	101,128
Sub-total to be used as base for calculation of the following overheads	$2,123,682

General salaries and expenses 2%		42,474
Legal expenses 1%		21,237
Architects and engineers 5%		106,184
Fire and Tornado insurance ½%		10,618
		$2,304,195
Workmen's Compensation and public liability insurance 6.1% of labor amounting to $762,048		46,485
Taxes during construction, on the basis of amounts actually paid on existing property for one year		18,257
Sub-total to be used as base for calculation of interest during construction		$2,368,937
Interest during construction		125,106
Total material and labor and overheads on 1927 inventory		$2,494,043
Additions and betterments 1927-1932	$124,533	
New stock viaduct	18,610	
Total additions and betterments		143,143
Total cost of reproduction new of respondent's used and useful property as of August 1, 1934		$2,637,186

[fol. 127] Cost of Reproduction New Less Depreciation

137. Having determined the cost of reproduction new of the various units of used and useful structures, the most usual method of ascertaining the cost of reproduction new, less depreciation, is to find the per cent condition of each unit and multiply its cost of reproduction new by such percentage. There is, however, another method, in which the cost of reproduction new, less depreciation, is procured by deducting from the cost of reproduction new of each unit a sum of money composed of (1) the estimated cost of replacing such parts of the unit as should be replaced, and (2) an estimate in money of the accrued depreciation in those parts of the structure which, though not sufficiently worn to warrant replacement, do not wear.

138. The two methods are not distinct, but each involves some elements, at least, of the other. They seem but slightly different methods of arriving at the same determination, namely, the proportion of the property which remains sound. At the first hearing, both Henrici and Kosters used the method first described above. A consulting engineer called by respondent employed and recommended the second. On most of the used and useful structures Henrici and Kosters found so little difference in their estimates of per cent conditions that, by a stipulation between them, they recommended the acceptance of the mean between their respective percentages.

139. The items of property concerning which the engineers were closely in agreement as to the per cent condition related largely to the pen areas then in active use. The record shows that, as to this property, both engineers pursued the same method. That is to say, both used the inspection method, which takes into account the age of structures only as such age is indicated by present condi- [fol. 128] tion, and both depreciated each structure as a whole rather than by parts and then aggregated to find a composite for the structures. Kosters' reason for following, with respect to the pen areas, the same method as Henrici was because in an attempt to make his inventory exactly comparable with that of Henrici he had set the elements of property up in the same units. To illustrate, he did not inventory posts and boards in a fence separately but ascertained the number of lineal feet in pen fences and in his appraisal found and applied the cost per lineal foot to arrive at the cost of reproduction new. Consequently, when he came to compute accrued depreciation, he was compelled to consider the fence as a unit, and could not separate the condition of the boards from that of the posts. This led him into harmony with Henrici's method. Kosters did not, however, inventory such important units as the Exchange Building, the foot subway, and so forth, in the same manner as he did the pen area and, therefore, was able to apply to them his method of depreciating a building by parts and then aggregating to find the condition as a whole. This led to such a divergence between the respective percentages which he and Henrici found for those structures that they agreed to designate their views as "irreconcilable." In respect to those structures, Henrici

and Kosters made equally detailed inspection, but Henrici was of opinion that deterioration found to exist in various parts of a building tended to depreciate the value of those parts in which no actual deterioration was discoverable. He, also, was of opinion that the observed degree of obsolescence and inadequacy in those parts in which either or both existed depreciated every part of the building. Henrici effectuated these opinions in arriving at his estimate of accrued depreciation or the so-called condition per cent. [fol. 129] Kosters, on the contrary, held the view that deterioration in one part of a building does not affect the value of another part in which no deterioration is found. Consequently, he would, for example, find undeteriorated flooring to have a condition per cent of 100 notwithstanding that the joists which supported it were deteriorated. Moreover, he was of opinion that obsolescence did not exist in a building until it had ripened into the building becoming obsolete and that there was no growing element of inadequacy but that a building would be entirely adequate until it became entirely inadequate. These principles he effectuated in his determination of condition per cent in respect to those items designated "irreconcilable." The fact that where Henrici and Kosters employed the same method there was no substantial difference between them and where they used a different method their results were "irreconcilable" point to the fact that the irreconcilable differences were due to method employed rather than the personal element. This indication is strengthened by the circumstances that when Kosters applied to the southern cattle division a method different from the one he employed in the actively used pen areas he and Henrici arrived respectively at conclusions which were "irreconcilable."

140. When Henrici and Kosters determined that they could not agree upon the condition per cent of certain structures, Henrici had two of his assistants make independent estimates. Those estimates he compared with the one originally made and, as to each structure, he recommended the highest figure.

141. At the second hearing there was no agreement or stipulation between the engineers with respect to accrued depreciation. Henrici used exactly the same method he had employed at the first hearing, with the exception that he

had independent estimates made by each of five of his as-
[fol. 130] sistant engineers and he adopted, as to each item of property, the average of the five estimates. Kosters changed his method to whatever degree was necessary to make it conform to that which had been recommended and employed by the consulting engineer at the first hearing. That is to say, he continued to compute depreciation for a building as a whole by merely aggregating the observed deterioration for those parts where he found it to exist, saying that if he found the wallpaper undeteriorated he would regard it as undepreciated notwithstanding that the plaster to which it was attached had deteriorated. He conceded, however, that, if in his opinion it was necessary to destroy the wallpaper in order to repair the plaster, he would give consideration to that. But, instead of setting up the observed conditions of the various parts of the building as percentages of the cost of reproduction new of those parts and aggregating to find the cost of reproduction new less depreciation for the building as a whole, he expressed his estimate of the discovered deterioration in terms of what he thought it would cost to restore the part to as good condition as when new. However, in case the parts were of a nature which could not be restored by repair and had not worn sufficiently to warrant replacement, then he used an estimate in money of the portion which had worn away. Those amounts he aggregated into a whole which he deducted from the cost of reproduction new to find the cost of reproduction new less depreciation. There is, therefore, no substantial difference between the method employed by Kosters at the first hearing and that used by him at the second. The questions for decision in respect to this matter are (1) whether deterioration in parts of a building depreciate the value only of those parts or of the building as a whole; (2) whether obsolescence should be considered; and (3) whether inadequacy should be considered.

[fol. 131] 142. With respect to the first question it is found that deterioration in parts of a structure tend to depreciate the structure as a whole. For example, though the brick in the walls may not have deteriorated in the least yet if other parts of the building have reached a condition rendering it advisable to raze the whole structure, the undeteriorated brick become merely used or recleaned brick having a market value much less than when new.

This equally is true in principle though the building has not reached that state of deterioration which warrants its destruction. The more or less constant deterioration of the various parts of the structure is bringing the whole day by day nearer to its inevitable end.

143. Kosters' testimony shows clearly that he made no distinction between the condition known as obsolescence and that called obsolete. He seemed to think that a building, for example, did not become obsolete as the result of progress thereto over a period of time, but rather by some improvement in the building art which rendered the old structure no longer desirable. The facts of record, however, indicate that such is not the case with respect to property as complex as stockyard buildings and structures. There is a showing of relatively constant replacement of parts here and there to keep the structures up to the modern requirements of the business. Many of these replacements are not caused by deterioration of the unit replaced, but by the fact that new requirements demand a somewhat different type of unit.

144. Much the same is true of the element of inadequacy. While, of course, a building is not replaced because of inadequacy until it becomes inadequate, nevertheless ordinarily it does not become so overnight, but as a result of a gradual process of growth of the business. However, [fol. 132] neither the element of obsolescence nor that of inadequacy is nearly so active in respect to stockyard structures, particularly buildings, as it is with respect to many other types of business properties. This is due in part to the absence of competition and to the fact that stockyard buildings usually may be expanded by annexes without necessitating the retirement of other costly structures.

145. Weighing these things and all the facts of record bearing on the matter of accrued depreciation, it is found that the method employed by Henrici for depreciation is more nearly in accord with actual experience. It, therefore, is here adopted, and it is found that the per cent condition of the labor and materials of respondent's is used and useful structures is 76.04 and the cost of reproduction new less depreciation thereof is $1,537,953.

Depreciation of General Overheads

146. At the first hearing Kosters was of opinion that the general overheads during construction depreciated. The view of Burnell and Henrici was that they do not. The opinion of each of them seemed inconsistent with his method of ascertaining accrued depreciation and the resultant condition per cent of the property. At the second hearing Henrici actually depreciated general overheads in order to arrive at his estimate of cost of reproduction new less depreciation, and Kosters did not.

147. Undeniably, these overheads suffer no process of gradual wear and tear, rust, rot and decay, but, like brick in the walls, which may go on unimpaired to the end of the life of the building, value goes out of these overheads when the structures come to the end of their usefulness. To the extent that the factors of depreciation have brought upon the structures a composite percentage of lessening in value, [fol. 133] these overheads have depreciated. It is true that when the structures have reached the end of their useful life there remains a sort of "scrap value" in these overheads, in that possibly the architect's plans, or part of them, could be used in the reconstruction, but the fact of retention of such value does not alter the conclusion that these overheads partake of the composite depreciation of the structures to which they relate. Therefore, it is found that these overheads, amounting to $471,489 have a condition per cent of 76.04 and there is included in the cost of reproduction new less depreciation of respondent's used and useful structures $358,520 to cover these items.

148. Based on the 1927 inventory, it is found that (1) the cost of reproduction new of all of respondent's structures hereinbefore found to be used and useful is $2,494,043 and that (2) the cost of reproduction new, less depreciation of those structures is $1,896,473. In order to find the cost of reproduction new and cost of reproduction new, less depreciation, respectively of respondent's used and useful structures as of August 1, 1932, there is added to each of the foregoing figures the actual cost, as shown on respondent's books, of additions and betterments, including "new stock viaduct," made to the used and useful structures during the period 1927 to 1932. The amount so added is $143,-

143 and it is found that (1) the cost of reproduction new of respondent's used and useful structural property as of August 1, 1932, is $2,637,186 and that (2) the cost of reproduction new, less depreciation, of said property as of that date is $2,039,616, according to the following table:

		Cost of reproduction new	Cost of reproduction new, less depreciation
[fol. 134] Structural property existant as of August 1, 1927		$2,494,043	$1,896,473
Additions and Betterments August 1, 1927 to August 1, 1932	$124,533		
New Stock Viaduct	18,610		
		143,143	143,143
		$2,637,186	$2,039,616

VI

Working Capital

149. Working capital is ready money with which a business meets those of its current cash expenses which have not as yet produced cash revenues. The amount of such capital needful in a particular business is dependent upon the lag in time between such expenditures and the recouping of them. In the case of expenditures on account of some stockyard services collections are made from shippers before the employees who render the service receive their salaries or wages. For instance, yardage is collected daily, yet the yard payroll is on a weekly basis. In the case of other functions, however, the respondent makes short-time advances, as when it buys, stores and pays for hay and grain which it sells later. In meeting such obligations as these, working capital is needed.

150. The accountant called by the Government gave it as his estimate that $10,000 in cash for payroll purposes, $29,275 for inventory purposes, and $12,000 for miscel- [fol. 135] laneous cash purposes, $51,275 in all, would constitute a revolving fund large enough to enable the respondent to meet promptly all its current cash requiring bills. He

recommended that $52,000 be included in the rate base on account of working capital.

151. The accountant of the respondent gave it as his opinion that a minimum of $125,000 should be included in the rate base for this purpose. In substantiation of this estimate, he set forth an itemized tabulation of the amounts necessary. An analysis of these items shows that many of them arose not on account of cash expenditure but from the use of facilities already included in the rate base. Some of these related to outside activities of the respondent, such as loans, and some to interest payment, and bond retirement. He included also $25,000 to take care of operating contingencies. Contingencies of this character are not continuously cash requiring and are hereafter provided for in a rate of return sufficient to enable the respondent to accumulate an adequate surplus, which may be drawn upon.

152. Giving due weight to the fact that, in the main, the collections of the respondent are on a daily basis, the amount necessary on of feed inventory, and to all the facts of record, it is found that $55,000 should be carried into the rate base of this account.

VII

Going Concern Value

153. Respondent contends that in addition to any and all other values which may be included in the ascertainment of fair value, and the rate base, it is entitled to have allowed and included an item to cover so-called going concern value. In so far as the amount contended for can be determined [fol. 136] from the rather indefinite evidence, it lies between a minimum of $294,000 and a maximum of $1,125,000, depending upon the value found for respondent's physical plant, the fair rate of return found, and the amount allowed for depreciation reserve. Respondent's claim in this respect is based entirely upon the testimony of the witness Howson, an engineer who made at both the first and second hearings an elaborate mathematical computation in an effort to show the amount of this so-called value; and upon the testimony at the first hearing of three of respondent's officers, who, together with four commission men doing business on the St. Joseph Stock Yards, gave to Howson the speculations upon which he based his elaborate computations for the

first hearing. At the second hearing similar computations were based on information supplied by two of respondent's officers and five commission men, none of whom testified thereat. The Government offered no evidence on this matter, except in rebuttal to show the feasibility of operating a stockyard during the period of construction and of caring for the business by temporary arrangements during such period.

154. At the second hearing the Government offered no evidence on this point, except to show that if respondent ceased to be a going concern its structural property would be practically valueless, due to the fact that the cost of wrecking would equal or exceed the scrap value; that the cost of reproduction new of respondent's structures in some place where a going business could never be developed would probably exceed the cost of reproduction new estimated by the appraisal engineers; and that conditions which might be expected to render the stockyard no longer a going concern would greatly depreciate the value of respondent's land.

155. Howson's computation produced at the first hearing [fol. 137] an amount of $666,666 as the going concern value of respondent's business. At the second hearing he followed the same method in making his computation, but arrived at the conclusions that, if the total valuation of respondent's property were $5,000,000, the going concern value would be $294,000, while, if the total value were $3,850,000, the going concern value would be $358,000; that if the physical reproduction were made at the cost of $5,000,000 as being the average for the period of 1927 to 1932, both inclusive, and respondent's average business and income for the same period were used, the going concern value would be $472,644; that if the computation were based on a business and income adequate to yield 7½ per cent return plus 4 per cent for depreciation reserve, upon whatever value might be found, the going concern value would be approximately 22½ per cent of the physical plant value; and that if the computations were based on a business and income adequate to yield a total of 10 per cent return and depreciation reserve upon whatever value may be found, the going concern value would be 19 per cent of the physical plant value.

156. The method recommended by the witness Howson, and which he called the Alvord or comparative method, is an attempt to estimate the cost of reproducing the business which respondent now enjoys by assuming that some person or persons, desirous of operating a stockyard at St. Joseph, Missouri, found themselves in the peculiar position whereby they could purchase respondent's property and business as a going operating concern or could construct exactly similar property and, if they decide upon the latter course, then respondent immediately would cease to operate its business. The witness Howson adopts the one-year construction period used by the valuation engineers as the basis for their calculation of certain overheads, such as interest [fol. 138] during construction, and assumes that during that year all the business theretofore enjoyed by respondent would be dissipated. At the first hearing he aggregated the present worth of these supposed deficits into a total of approximately $667,000, and at the second hearing into various amounts, and then set out to determine what it would cost the new concern to attach to its new stockyard the amount of business, and its resultant income, which respondent now enjoys. To do this, he seeks to ascertain the period of time which would elapse after the new yard began operations and before its receipts of livestock and resultant income, would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He assumes that the expenses of the new company during each of those years would be the same as those of respondent during the test year in this proceeding, namely, 1928, at the first hearing and various years at the second, and, deducting from such expenses the income expected to be derived from the imagined receipts of livestock, ascertains the possible deficit during each of the recovery years. He says that whether the new company built its own new yard at the cost of reproduction new or purchased the existing yard as a going concern, the ultimate cost of the new company would be exactly the same. Wherefore, he drew the conclusion that, at the first hearing $667,000, and at the second hearing various amounts, represented the fair value of the element of going concern in respondent's business.

157. In Valuation Docket 785, the St. Joseph Belt Railway, the Interstate Commerce Commission, addressing itself to this identical method, testified to by the same witness, said:

"The analysis of the witness is so replete with assump-
[fol. 139] tions and estimates as to render it worthless for all practical purposes. The whole method consists of a presentation in new form of an estimate of deficiency below a fair return which the carrier, if reproduced on valuation date, would suffer before it attained the status of a financially successful concern. The theory that the total amount by which the carrier's actual income during its early years fails to yield a fair return on the investment should be added as an element of value for rate making purposes was condemned by the Supreme Court in Galveston Electric Company v. Galveston, 258 U. S. 388. By the stronger reason, hypothetical deficiencies must also be rejected."

158. Respondent contends, however, that the witness Howson's method of estimating going concern value is no more speculative than that of the valuation engineers as to cost of reproduction new. Without analysis of the witness' elaborate procedure, this may appear to be true. But, the difference lies in this, that the quantities of material necessary to reproduce physical structures can be ascertained by the engineering processes of measurement and computation with reasonable mathematical certainty and almost wholly devoid of the elements of guess and speculation. The present prices and costs of those materials delivered at the job can be found with approximately equal certainty; the present prices of union labor can be determined from lists maintained by the local unions; the amount of labor probably to be required can be estimated from a wealth of experience of the particular valuation engineer and many others of his profession with respect to thousands of structures theretofore built, as can also the period of time required for the reconstruction and the amounts of the overheads which probably will be incurred. On the other hand, the witness Howson, while likening this estimate of the recovery of receipts to an engineer's estimate of the cost of constructing a physical property and saying [fol. 140] that one is not more difficult or speculative than the other, admitted that in the case of estimates of recon-

struction of physical property the engineer has the benefit of past experience whereas he had no such similar guiding star with respect to the recovery of stockyard receipts and had never gone through a stockyards business reconstruction, nor had anyone else to his knowledge. Lacking this experience and its resultant knowledge, he sought from the respondent's officers and the commission men above mentioned the required information as to the length of the recovery period and the rate of recovery of receipts of livestock during such period. Both he and they, in so far as they testified, admit that none of them has ever had any experience with recovery of the receipts and income of a stockyard or any other business. They suggested periods of recovery the average of which was approximately eight years but he reduced it to five years and used that as his basic figure. They also suggested rates of recovery the average within the period, which formed the basis of the rates of recovery used by him. Obviously, this method is capable of expansion to produce any desired amount of going-concern value by merely increasing the imagined period of recovery or slowing up the supposed rate of recovery. Inasmuch as no one has had any experience from which to form any judgment or estimate, no one could say that a period shorter than that estimated or a higher rate would be correct. For these and other reasons, the method suggested by the witness Howson for measuring going concern value is not adopted. His speculations and those of the other witnesses upon which he bases his computations are in no real sense evidence.

159. That there is an element of value in an assembled and established plant doing business and earning money over one not thus advanced is recognized. Yet, the very [fol. 141] impossibility of finding any reasonable rule or measure wherewith to determine, for rate making purposes, the amount of such value, bespeaks the impropriety of attempting to include in rate making valuations any separate allowances for that purpose. The elaboration which Howson gives to his method does not disguise the fact that in the end it is but a guess. An arbitrary percentage of other values leads to the illogical conclusions that the more a property costs the greater is its going-concern value, even though it may not be earning any net return upon its cost of reproduction new. In actuality, going-concern value is

conceived to be the difference between the present fair value of the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis for determination of the reasonableness of that income. This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes. Attempts to substitute other methods have led to the confusing and illogical results which so generally characterize separate allowance to cover going-concern value.

160. Exclusion from the rate base of such separate allowance is not, however, tantamount to the failure to include therein anything for the going concern element. The very fact that the land used in the business has the value ascribed to it is because of its capacity for use as part of a going concern. The cost of reproduction new of structures is not necessarily value, but only such when and as it relates to property used as a part of a going concern. The record in this case shows that it would cost more to reproduce respondent's structures on a desert, without [fol. 142] means of transportation or livestock to market, but that, when so reproduced, they would be valueless. This is because it is the going concern element that transmutes cost of reproduction new into value. When respondent's structures are included in the rate base at the cost of reproduction new less depreciation, rather than scrap or junk value, it is because, and only because, they have inherent in them their use in a going, operating business. Thus, in the rate base herein found, there is included a large amount for going-concern value, but such value is so inextricably interwoven with other values that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made.

VIII

Conclusion as to Fair Value

161. Hereinbefore, the following values have been found for respondent's used and useful property and as necessary working capital, namely:

Land (Para. 121)	$647,547.84
Structures (Para. 148)	2,039,616.00
Working Capital (Para. 152)	55,000.00
Total	$2,742,163.84

Therefore, upon the basis of the foregoing, in connection with all the evidence, it is found that the fair value of respondent's used and useful property is $2,743,000.

[fol. 143]

IX

Fair Rate of Return

162. Respondent contended in the first hearing that, in calculating the reasonableness of its rates, there should be employed a rate of return of at least 11%. This is based on the hypothesis of a capital structure of one-fifth bonds, bearing an interest rate of 6%, and four-fifths common stock, paying dividends at the rate of 6%, leaving 5% to be added to surplus, and is supported in this contention by the opinion of a local investment banker who calculated a return, or company earnings, of 7.10% on the one-fifth represented by bonds and of 11% on the four-fifths represented by the common stock, making a total of 10.22% on the entire capitalization. This he regarded as the minimum fair return.

163. An economist of wide experience, who had devoted much study to the question, was of opinion that a return, or company earnings, of from 7½% to 8% would be sufficient to enable respondent's securities to occupy in the field of finance a position comparable to, that is, to be on a parity with, the securities of other sound public utilities and industrial corporations, so that investors seeking to invest their funds would regard respondent's securities in as favorable a light as those of any other sound corporation whose securities might be considered; that under all the circumstances, both financial and what he knew of the operations of respondent's stockyard, rates which at the time of the hearing would have brought in 7½%, and perhaps a little shade under that, would be as low as would maintain the securities equal to the value of the property on a parity with other securities, and if the rates produced

as much as 8%, they would be getting to the point where they might be so high as to impose excessive charges upon [fol. 144] respondent's patrons; that, if the value of the property be approximately equal to that of the outstanding securities, a rate of 7½% would be indicated; and that this rate, varying possibly from slightly below 7½% to 8%, is not the return in the form of dividends which respondent would pay to its security holders but is the return which it should earn in order that they might continue to receive interest and dividends.

164. It is obvious that in the above stated 7½% to 8% there was included an allowance for the payment of current interest and dividends on securities equal to the value of the property, and also a sufficient annual addition to surplus reasonably to insure the continuity of interest and dividends over future periods during which the stockyard's net operating income may be insufficient to pay interest and the adequate dividends.

165. At the second hearing the same two witnesses were called. The investment banker testified that he knew of nothing in the general economic situation which led him to believe that a reasonable return as of the date of the second hearing would be less than that testified to by him in the first, namely, 11%.

166. The economist, who had continued his investigation during the interval, was of the opinion that the year 1932 was subnormal in point of receipts by the respondent and subnormal as to earnings, and that a schedule of rates which would have produced a return of from 6% to 6½% under those conditions would not for that reason be unreasonably low. He testified further that if the six-year period from 1927 to 1932, inclusive, be considered, the reasonable rate of return to be used in arriving at reasonable rates should be between 6½% and 7½%.

167. Both witnesses were in agreement that as of the date of the second hearing the money market was demoralized and that it would have been practically impossible for [fol. 145] the respondent to raise at that time and on reasonable terms an amount of money equal approximately to the fair value of the property. The evidence is clear that at the time of the second hearing corporate earnings of all classes had declined, but that those of the respondent had

not suffered in as great a degree as most industrial and public utility enterprises. The property of the respondent was already built and there was no need for the company to raise an amount of money equal to its value. Moreover, prudent management would not have embarked upon the building of a stockyard such as that operated by the respondent at a time when the raising of the money to finance it would have been well nigh impossible. It would obviously be unfair to base a rate of return wholly upon the high cost of money then prevailing, and cover this cost into rates to be charged shippers of livestock in future periods when interest rates should have ceased to be panic rates.

168. The rates prescribed in the order issued as a result of the first hearing were based upon 7½% as a fair return as of that time, and upon the financial showing of the respondent during the year next preceding that of the hearing, a financial showing considerably better than for the period 1927 to 1932, inclusive. The rates hereafter prescribed in this order are based upon detailed studies of the financial operations of the business of the respondent during this six-year period, and upon a consideration of the history of the company and other facts with respect to it extending over a much longer period. The rates hereinafter prescribed are to be charged in future years. It is not to be expected that all the conditions prevailing or which have prevailed will continue precisely as they are or as they have been, and that rates calculated upon the basis of any given return will continue to produce year in and year out thereafter the exact rate used as a factor in calculating them.

[fol. 146] 169. Variations in conditions and the consequent variation in earnings and in the rate of return on the value of the property are necessary consequents of changing conditions. Such variation in return, however, as may take place does not render unreasonable the rates prescribed on the basis of that return. The return produced by the rates in any year may, due to unusual conditions, produce temporarily a rate above or below that used as a basis for calculating the rates. So long as this, however, is the result of unusual conditions, it cannot be attributable to the unreasonableness of the rates prescribed.

170. The period elapsing between the first and second hearing has been one of unprecedented economic disturb-

ance. What has taken place in this period gives little indication of what may be expected under a more normal situation. A schedule of rates based wholly upon a year of extreme prosperity immediately preceding the first hearing, or the extreme depression prevailing at the time of the second hearing, might easily prove to be inapplicable in a more normal period. Giving weight to the facts of record bearing upon the rate of return, the unusual conditions which have prevailed, and all other pertinent information, it is found that 7 per cent is the reasonable rate of return to be used in the determination of reasonable rates to be charged by the respondent.

X

Reasonable Net Operating Income

171. The reasonable net operating income to be produced by the rates prescribed herein is 7 per cent of $2,743,000 or $192,010.

[fol. 147]

XI

Reasonable Operating Expenses

172. In addition to producing a fair return on the fair value of respondent's used and useful property as shown above, a reasonable schedule of rates and charges should produce enough revenue to pay all reasonable stockyard operating expenses. The rates prescribed will apply to the future. As a guide to what may be expected, the Secretary caused to be made by an accountant for the Government a detailed audit and a minute analysis of the books and records of the respondent covering the six-year period from 1927 to 1932, inclusive. This audit contains a balance sheet showing the assets and liabilities as of the end of each year, an income account showing all revenues received from whatsoever source and all expenses incurred on whatever account during each of the years, and also a reconciliation of surplus as of the end of each of the years. In addition to making an audit of the respondent's business for the six years the accountant made a study into the history of the development of the yards and set forth in the record much collateral information bearing upon the financial operations of the stockyards since its establishment.

Repairs and Depreciation

173. The properties of the respondent are maintained by repairs but not in the same condition as when new. There is of necessity deterioration in physical property which cannot be made good through repairs. In order that there may not be an invisible wastage of assets something must be set aside in a depreciation reserve to offset this irreparable physical deterioration. The respondent [fol. 148] expended on account of repairs on its used and useful property from 1922 to 1932, inclusive, an average of approximately $38,500 annually.

174. In the year 1922 the American Appraisal Company appraised the property of the respondent and observed in it a depreciation amounting to $621,171. This depreciation had taken place despite repairs and retirements that had been made. In 1929, seven years later, two appraisals of the property were made, one by an engineer for the Government and the other by the engineer of the stockyard company. In 1932 again two appraisals were made by the same individuals. Henrici observed depreciation amounting to $641,464 in 1929 and $648,631 in 1932. Kosters in 1929 observed $535,907 depreciation and in 1932 only $337,437. The amount of depreciation observed by Henrici in 1929 was about $20,000 greater than that observed by the American Appraisal Company in 1922. A comparison of Henrici's observed depreciation in 1929 and 1932, respectively, shows a depreciation during the three years of approximately $7,000. A comparison of the depreciation observed by Kosters in 1929 with that observed by him in 1932 shows an appreciation during the three years of approximately $200,000. A comparison of the American Appraisal Company's observed depreciation in 1922 with that of Kosters observed in 1929 shows a betterment in condition of about $85,000 and a comparison of these observations as of 1922 and 1932 shows a betterment of $285,000.

175. In addition to the actual depreciation observed there must be taken into consideration retirements made from asset accounts of the company. The retirements made from 1916 to 1932 were $239,550, on all property whether used and useful or not. This is an average of about $15,000 a year. Included in the total retirements were about $25,000 on account of fire losses. If this amount and the retire-

[fol. 149] ment on property not used and useful be eliminated the average for the sixteen-year period is between $7,000 and $10,000. There is nothing in the record to indicate that the appreciation observed by Kosters can be accounted for by extraordinary additions and betterments. Respondent's property consists of buildings and a wide expanse of pens and alleys. The character of the pens and alleys is such that they can be maintained at a fairly uniform condition by adequate repairs. Repairs on respondent's buildings are not so effective in this respect..

176. The composite property to which this experience relates was constructed principally between the years 1897 and 1900. The experience, therefore, covers a period of 11 years as to repairs and observed depreciation and of 17 years as to retirements in the life of a property which, when the respective periods began, had already existed a sufficient length of time to cause it to have reached that condition of normal deterioration wherein ordinary repairs and replacements tend to keep its physical condition almost the same from year to year. This experience shows that during the 11-year period above mentioned the setting aside for maintenance of approximately $50,000 annually would have been sufficient to provide necessary repairs, reimburse respondent for property retired and offset that inevitable wastage of assets which could not be prevented by repairs and replacements. This, therefore, would indicate that $50,000 is a sufficient amount to be included in the annual expense to cover repairs and provision for depreciation reserve were it not that the periods of experience above described have not been sufficient in length to provide adequate tests as to certain structures which by reason of their nature may be expected to last considerably longer than the property in composite; and also were it not that [fol. 150] there is deterioration through obsolescence and changed conditions which reasonably is to be expected to occur but which presently is unobservable.

177. Considering that the factors of obsolescence and changed conditions are least active in their deteriorating effect upon the property; and that the lack of sufficient experience does not relate to the greater part of the value of the property; and, giving due weight to all the facts of record, including the opinions of the experts who testified, it is found that $80,000 is an adequate amount to be in-

cluded in respondent's annual expenses to cover repairs and provision for depreciation reserve.

Taxes

178. Another expense a reasonable amount for which must be covered into rates is that incurred on account of taxes. The total taxes of all classes paid by the respondent during the six years from 1927 to 1932 is as follows:

	State and county	Franchise	City	State income	Federal income
1932.....	$21,387.77	$1,928.47	$2,804.36	$1,667.90	$15,687.34
1931.....	23,945.48	1,977.88	3,138.32	1,667.90	26,933.93
1930.....	26,070.03	2,118.33	3,156.23	2,506.34	39,027.68
1929.....	28,388.26	2,546.52	3,157.85	2,474.19	39,146.28
1928.....	28,865.71	2,681.21	3,194.74	2,667.90	44,441.77
1927.....	29,430.44	2,850.95	6,031.26	2,232.10	42,381.16

179. The amounts given above include taxes on both used and useful, non-used and useful property and income taxes on stockyard income and income from other sources. The total amounts of annual taxes paid under each classification shows a decline during the last six years.

180. The detailed information with respect to taxes paid during the earlier years of the period is not such as to make an accurate segregation between the taxes paid on account of stockyard activities and non-stockyard activities. [fol. 151] The record does contain sufficient information to make such a segregat-on for city and county taxes during the year 1931 paid on real or personal property. In arriving at the allowance hereinafter made to cover taxes major consideration has been given to the experience of the respondent during the years 1931 and 1932. In computing the allowance for State, County and City taxes the average amount paid for the years 1931 and 1932 has been taken. From this there has been deducted the taxes allocable to non-used and useful property amounting to approximately $8,800. This computation results in a little less than $17,000. There has been included in the expense on account of taxes $17,000 for State, County and City taxes. During each of the years 1931 and 1932 the franchise tax paid by respondent was a little less than $2,000 and in 1930 a little over that amount. Two thousand dollars has been included on account of franchise tax. There has been included on account of State income tax $1,700, and on account of Federal income tax $23,067. The sum of the

allowances shown above is $43,767. This amount is deemed sufficient to pay State, County, City and franchise taxes, and State income and Federal income taxes based upon the income resulting from the rates hereinafter prescribed.

Other Expenses

181. The following table shows in detail for each of the six years covered by the audit hereinbefore described (1) all expenses actually incurred by respondent as shown on its books; (2) items of expense eliminated in whole or in part for the reasons hereinafter stated; and (3) the expenses which are considered in arriving at the finding hereinafter made as to the amount of annual expenses, other than the amount allowed for depreciation and repairs and taxes, used as a factor in arriving at the rates hereinafter prescribed.

(Here follows table, side folio 152)

[fol. 152]

	1932			1931			1930		
	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered
Office and Management Payroll a/c	$ 23,528.68	.....	$ 23,528.68	$ 25,155.88	.....	$ 25,155.88	$ 21,359.20	.....	$ 21,359.20
Miscellaneous Adm. Expense	6,071.50	.....	6,071.50	6,425.82	$ 235.34	6,190.48	5,814.44	.....	5,814.44
Officers' Travel and Entertainment	681.27	.....	681.27	547.27	.....	547.27	471.12	.....	471.12
Legal and Collection	1,500.00	.....	1,500.00	1,608.95	.....	1,608.95	1,934.63	.....	1,934.63
Pensions	5,268.74	.....	5,268.74	2,525.00	.....	2,525.00	1,957.50	.....	1,957.50
Donations and Subscriptions	2,423.46	$ 1,360.56	1,062.90	2,595.11	1,321.70	1,273.41	2,437.20	$ 1,342.20	1,095.00
Taxes	43,475.84	43,475.84	.....	57,663.51	57,663.51	.....	72,878.61	72,878.61	.....
Depreciation	122,509.92	122,509.92	.....	123,066.12	123,066.12	.....	121,427.64	121,427.64	.....
Insurance	13,701.59	1,042.69	12,658.90	14,430.61	1,098.17	13,332.44	13,209.63	1,005.25	12,204.38
Valuation Bearing	3,082.54	.....	3,082.54	3,479.43	.....	3,479.43	3,986.79	.....	3,986.79
Bond Interest	46,014.02	46,014.02	.....	48,517.19	48,517.19	.....	15,277.80	15,277.80	.....
Bond Discount	4,855.83	4,855.83	.....	6,241.24	6,241.24	.....	2,904.35	2,904.35	.....
Office Rent	1,782.00	.....	1,782.00	1,782.00	.....	1,782.00	1,419.66	.....	1,419.66
Office Supplies	682.67	.....	682.67	709.88	.....	709.88	1,383.82	.....	1,383.82
Office Expense	120.24	.....	120.24	122.23	.....	122.23	128.60	.....	128.60
Office Postage	267.07	.....	267.07	242.62	.....	242.62	277.29	.....	277.29
Telephone and Telegraph	903.31	.....	903.31	692.82	.....	692.82	426.17	.....	426.17
Store House Expense	1,117.60	.....	1,117.60	1,232.72	.....	1,232.72	1,653.61	.....	1,653.61
Engineering	3.41	.....	3.41	6.83	.....	6.83	849.90	.....	849.90
Fiscal Agents, Registrars, etc.	308.12	250.30	57.82	314.06	253.13	60.93	1,403.64	1,403.64	.....
Yard Payrolls	119,956.40	.....	119,956.40	132,239.82	.....	132,239.82	137,133.42	.....	137,133.42
Yard Cleaning and Disinfecting	19,241.37	.....	19,241.37	20,123.07	.....	20,123.07	21,126.41	.....	21,126.41
Yard Current	3,749.71	.....	3,749.71	4,342.24	.....	4,342.24	3,942.05	.....	3,942.05
Yard Casualty Insurance	3,528.75	.....	3,528.75	4,147.50	.....	4,147.50	4,896.81	.....	4,896.81
Estrays	375.07	.....	375.07	852.50	.....	852.50	892.88	.....	892.88
Water, Electricity and Heat	13,164.98	.....	13,164.98	13,448.91	.....	13,448.91	13,410.55	.....	13,410.55
Company Barn	1,922.28	.....	1,922.28	1,891.79	.....	1,891.79	2,056.57	.....	2,056.57
Yard Truck	120.47	.....	120.47	247.33	.....	247.33	244.69	.....	244.69
Cost of Hog Pen Bedding	177.96	.....	177.96	187.21	.....	187.21	338.38	.....	338.38
Milling Feed Expense	1,749.70	.....	1,749.70	1,905.76	.....	1,905.76	1,801.62	.....	1,801.62
Grain Elevator	1,005.70	.....	1,005.70	1,073.95	.....	1,073.95	1,530.97	.....	1,530.97
Weighing	3,479.28	.....	3,479.28	3,812.83	.....	3,812.83	.....	.....	.....
Dipping	85.56	.....	85.56	42.05	.....	42.05	4.78	.....	4.78
Car Partitions, etc.	19.72	.....	19.72	253.29	.....	253.29	446.21	.....	446.21
Immunization Plant	453.09	.....	453.09	870.71	.....	870.71	393.14	.....	393.14
Repairs—Yard Structures	12,153.72	12,153.72	.....	14,457.73	14,457.73	.....	17,426.06	17,426.06	.....
Repairs—Water Lines	2,602.90	2,602.90	.....	2,091.28	2,091.28	.....	3,124.43	3,124.43	.....
Repairs—Sewers	561.76	561.76	.....	1,393.55	1,393.55	.....	480.43	480.43	.....
Repairs—Paving	1,074.16	1,074.16	.....	1,371.98	1,371.98	.....	2,345.81	2,345.81	.....
Repairs—Hay Barn	247.54	247.54	.....	188.20	188.20	.....	202.08	202.08	.....
Repairs—Equipment	319.88	319.88	.....	652.60	652.60	.....	413.46	413.46	.....
Repairs—Outside Property	796.72	796.72	.....	1,648.11	1,648.11	.....	1,948.67	1,948.67	.....
Repairs—Exchange Building	1,755.35	1,755.35	.....	2,493.85	2,493.85	.....	4,194.86	4,194.86	.....
Repairs—Feeding Facilities	281.76	281.76	.....	608.04	608.04	.....	462.85	462.85	.....
Payroll—Traffic Department	6,804.00	.....	6,804.00	7,371.00	.....	7,371.00	5,778.92	.....	5,778.92
Solicitors' Salaries—Traffic Dept.	14,921.00	.....	14,921.00	13,600.86	.....	13,600.86	9,457.70	.....	9,457.70
Casualty Insurance—Traffic Dept.	2.28	.....	2.28	2.80	.....	2.80	2.56	.....	2.56
Postage—Traffic Dept.	326.55	.....	326.55	361.82	.....	361.82	179.88	.....	179.88
Printing and Stationery—Traffic Dept.	371.80	.....	371.80	301.54	.....	301.54	246.32	.....	246.32
Telephone and Telegraph—Traffic Dept.	1,681.50	.....	1,681.50	1,832.51	.....	1,832.51	1,871.25	.....	1,871.25
Miscellaneous—Traffic Dept.	1,168.24	.....	1,168.24	222.85	.....	222.85	105.17	.....	105.17
Solicitors' Expense—Traffic Dept.	14,312.25	.....	14,312.25	11,517.16	.....	11,517.16	8,880.08	.....	8,880.08
Advertising—Traffic Dept.	3,870.11	.....	3,870.11	3,583.32	.....	3,583.32	3,035.73	.....	3,035.73
Stock Show	2,764.99	.....	2,764.99	3,069.67	.....	3,069.67	3,199.31	.....	3,199.31
Exchange Building—Labor	7,029.05	.....	7,029.05	8,800.27	.....	8,800.27	10,286.63	.....	10,286.63
Exchange Building—Casualty Insurance	265.79	.....	265.79	287.97	.....	287.97	322.14	.....	322.14
Exchange Building—Elec., Water, Heat	5,055.68	.....	5,055.68	4,946.03	.....	4,946.03	5,262.79	.....	5,262.79
Exchange Building—Supplies	1,635.39	.....	1,635.39	1,775.92	.....	1,775.92	2,002.37	.....	2,002.37
Truck Washing Expense	234.01	.....	234.01	231.64	.....	231.64	204.43	.....	204.43
Sale Pavilion Expense	3.50	.....	3.50	.....	.....	.....	.....	.....	.....
Miscellaneous O. R. E. Expense	2,334.07	2,334.07	.....	2,514.54	2,514.54	.....	2,410.81	2,410.81	.....
[illegible]ty Insurance O. R. E.	36.96	36.96	.....	36.94	36.94	.....	36.94	36.94	.....
Tractor and Trailer Expense	623.93	.....	623.93	745.97	.....	745.97	1,384.80	.....	1,384.80
Audit Expense	330.05	.....	330.05	651.00	.....	651.00	469.14	.....	469.14
Repairs—Furniture and Fixtures	.....	.....	.....	.....	.....	.....	16.84	16.84	.....
Bad Debts	320.52	.....	320.52	31.29	.....	31.29	168.58	.....	168.58

	1,500.00		1,500.00	1,608.95		1,608.95	1,934.63		1,934.63	
Pensions	5,268.74		5,268.74	2,525.00		2,525.00	1,957.50		1,957.50	
Donations and Subscriptions	2,423.46	$ 1,360.56	1,062.90	2,595.11	1,321.70	1,273.41	2,437.20	$ 1,342.20	1,095.00	
Taxes	43,475.84	43,475.84		57,663.51	57,663.51		72,878.61	72,878.61		
Depreciation	122,509.92	122,509.92		123,066.12	123,066.12		121,427.64	121,427.64		1
Insurance	13,701.59	1,042.69	12,658.90	14,430.61	1,098.17	13,332.44	13,209.63	1,005.25	12,204.38	1
Valuation Bearing	3,082.54		3,082.54	3,479.43		3,479.43	3,986.79		3,986.79	1
Bond Interest	46,014.02	46,014.02		48,517.19	48,517.19		15,277.80	15,277.80		3
Bond Discount	4,855.83	4,855.83		6,241.24	6,241.24		2,904.35	2,904.35		
Office Rent	1,782.00		1,782.00	1,782.00		1,782.00	1,419.66		1,419.66	
Office Supplies	682.67		682.67	709.88		709.88	1,383.82		1,383.82	
Office Expense	120.24		120.24	122.23		122.23	128.60		128.60	
Office Postage	267.07		267.07	242.62		242.62	277.29		277.29	
Telephone and Telegraph	903.31		903.31	692.82		692.82	426.17		426.17	
Store House Expense	1,117.60		1,117.60	1,232.72		1,232.72	1,653.61		1,653.61	
Engineering	3.41		3.41	6.83		6.83	849.90		849.90	
Fiscal Agents, Registrars, etc.	308.12	250.30	57.82	314.06	253.13	60.93	1,403.64	1,403.64		
Yard Payrolls	119,956.40		119,956.40	132,239.82		132,239.82	137,133.42		137,133.42	14
Yard Cleaning and Disinfecting	19,241.37		19,241.37	20,123.07		20,123.07	21,126.41		21,126.41	2
Yard Current	3,749.71		3,749.71	4,342.24		4,342.24	3,942.05		3,942.05	
Yard Casualty Insurance	3,528.75		3,528.75	4,147.50		4,147.50	4,896.81		4,896.81	
Estrays	375.07		375.07	852.50		852.50	892.88		892.88	
Water, Electricity and Heat	13,164.98		13,164.98	13,448.91		13,448.91	13,410.55		13,410.55	1
Company Barn	1,922.28		1,922.28	1,891.79		1,891.79	2,056.57		2,056.57	
Yard Truck	120.47		120.47	247.33		247.33	244.69		244.69	
Cost of Hog Pen Bedding	177.96		177.96	187.21		187.21	338.38		338.38	
Milling Feed Expense	1,749.70		1,749.70	1,905.76		1,905.76	1,801.62		1,801.62	
Grain Elevator	1,005.70		1,005.70	1,073.95		1,073.95	1,530.97		1,530.97	2
Weighing	3,479.28		3,479.28	3,812.83		3,812.83				
Dipping	85.56		85.56	42.05		42.05	4.78		4.78	1
Car Partitions, etc.	19.72		19.72	253.29		253.29	446.21		446.21	
Immunization Plant	453.09		453.09	870.71		870.71	393.14		393.14	
Repairs—Yard Structures	12,153.72	12,153.72		14,457.73	14,457.73		17,426.06	17,426.06		20
Repairs—Water Lines	2,602.90	2,602.90		2,091.28	2,091.28		3,124.43	3,124.43		5
Repairs—Sewers	561.76	561.76		1,393.55	1,393.55		480.43	480.43		
Repairs—Paving	1,074.16	1,074.16		1,371.98	1,371.98		2,345.81	2,345.81		3
Repairs—Hay Barn	247.54	247.54		188.20	188.20		202.08	202.08		
Repairs—Equipment	319.88	319.88		652.60	652.60		413.46	413.46		
Repairs—Outside Property	796.72	796.72		1,648.11	1,648.11		1,948.67	1,948.67		6
Repairs—Exchange Building	1,755.35	1,755.35		2,493.85	2,493.85		4,194.86	4,194.86		5
Repairs—Feeding Facilities	281.76	281.76		608.04	608.04		462.85	462.85		
Payroll—Traffic Department	6,804.00		6,804.00	7,371.00		7,371.00	5,778.92		5,778.92	4
Solicitors' Salaries—Traffic Dept.	14,921.00		14,921.00	13,600.86		13,600.86	9,457.70		9,457.70	8
Casualty Insurance—Traffic Dept.	2.28		2.28	2.80		2.80	2.56		2.56	
Postage—Traffic Dept.	326.55		326.55	361.82		361.82	179.88		179.88	
Printing and Stationery—Traffic Dept.	371.80		371.80	301.54		301.54	246.32		246.32	
Telephone and Telegraph—Traffic Dept.	1,681.50		1,681.50	1,832.51		1,832.51	1,871.25		1,871.25	1
Miscellaneous—Traffic Dept.	1,168.24		1,168.24	222.85		222.85	105.17		105.17	
Solicitors' Expense—Traffic Dept.	14,312.25		14,312.25	11,517.16		11,517.16	8,880.08		8,880.08	8
Advertising—Traffic Dept.	3,870.11		3,870.11	3,583.32		3,583.32	3,035.73		3,035.73	3
Stock Show	2,764.99		2,764.99	3,069.67		3,069.67	3,199.31		3,199.31	3
Exchange Building—Labor	7,029.05		7,029.05	8,800.27		8,800.27	10,286.63		10,286.63	11
Exchange Building—Casualty Insurance	265.79		265.79	287.97		287.97	322.14		322.14	
Exchange Building—Elec., Water, Heat	5,055.68		5,055.68	4,946.03		4,946.03	5,262.79		5,262.79	5
Exchange Building—Supplies	1,635.39		1,635.39	1,775.92		1,775.92	2,002.37		2,002.37	2
Truck Washing Expense	234.01		234.01	231.64		231.64	204.43		204.43	
Sale Pavilion Expense	3.50		3.50							
Miscellaneous O. R. E. Expense	2,334.07	2,334.07		2,514.54	2,514.54		2,410.81	2,410.81		2
Casualty Insurance O. R. E.	36.96	36.96		36.94	36.94		36.94	36.94		
Tractor and Trailer Expense	623.93		623.93	745.97		745.97	1,384.80		1,384.80	1
Audit Expense	330.05		330.05	651.00		651.00	469.14		469.14	
Repairs—Furniture and Fixtures							16.84	16.84		
Bad Debts	320.52		320.52	31.29		31.29	168.58		168.58	
Cost of Shoes Sold (Employees)							370.74	370.74		
Bank Exchange										
Manure Sales Expense				30.25		30.25	108.26		108.26	
Bond Issue Expense				1,000.00	1,000.00		8,277.15	8,277.15		
Interest							19.16	19.16		
Total	$531,213.31	$241,673.98	$289,539.33	$570,618.94	$266,853.22	$303,765.72	$554,116.43	$257,969.78	$296,146.65	$625

1930				1929			1928			1927		
(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered
$ 25,155.88	$ 21,359.20	.....	$ 21,359.20	$ 21,608.87	.....	$ 21,608.87	$ 20,035.18	.....	$ 20,035.18	$ 19,990.41	.....	$ 19,990.41
6,190.48	5,814.44	.....	5,814.44	3,473.08	$ 787.62	2,685.46	1,531.71	.....	1,531.71	1,553.00	.....	1,553.00
547.27	471.12	.....	471.12	607.03	.....	607.03	1,023.90	.....	1,023.90	968.60	.....	968.60
1,608.95	1,934.63	.....	1,934.63	1,960.00	.....	1,960.00	1,650.00	.....	1,650.00	1,500.00	.....	1,500.00
2,525.00	1,957.50	.....	1,957.50	920.00	.....	920.00	1,500.00	.....	1,500.00	1,500.00	.....	1,500.00
1,273.41	2,437.20	$ 1,342.20	1,095.00	3,338.89	1,715.20	1,623.69	2,802.58	$ 1,462.11	1,340.47	2,455.55	$ 1,246.09	1,209.46
.....	72,878.61	72,878.61	.....	75,713.10	75,713.10	.....	81,851.13	81,851.13	.....	82,925.91	82,925.91	.....
.....	121,427.64	121,427.64	.....	129,908.84	129,908.84	.....	127,645.89	127,645.89	.....	127,597.03	127,597.03	.....
13,332.44	13,209.63	1,005.25	12,204.38	13,237.21	1,007.35	12,229.86	13,790.95	1,049.49	12,741.46	14,144.19	1,076.37	13,067.82
3,479.43	3,986.79	.....	3,986.79	12,683.28	.....	12,683.28	.....	.....	.....	.....	.....	.....
.....	15,277.80	15,277.80	.....	56,250.00	56,250.00	.....	56,250.00	56,250.00	.....	56,250.00	56,250.00	.....
.....	2,904.35	2,904.35	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1,782.00	1,419.66	.....	1,419.66	1,141.08	.....	1,141.08	1,141.08	.....	1,141.08	1,141.08	.....	1,141.08
709.88	1,383.82	.....	1,383.82	1,841.81	.....	1,841.81	2,245.37	.....	2,245.37	1,586.88	.....	1,586.88
122.23	128.60	.....	128.60	109.69	.....	109.69	117.35	.....	117.35	98.47	.....	98.47
242.62	277.29	.....	277.29	182.95	.....	182.95	216.61	.....	216.61	203.75	.....	203.75
692.82	426.17	.....	426.17	198.76	.....	198.76	155.53	.....	155.53	109.33	.....	109.33
1,232.72	1,653.61	.....	1,653.61	1,457.86	.....	1,457.86	1,453.04	.....	1,453.04	1,449.12	.....	1,449.12
6.83	849.90	.....	849.90	914.67	.....	914.67	906.31	.....	906.31	995.10	.....	995.10
60.93	1,403.64	1,403.64	.....	265.62	265.62	.....	265.62	265.62	.....	125.00	125.00	.....
132,239.82	137,133.42	.....	137,133.42	140,644.53	.....	140,644.53	140,393.55	.....	140,393.55	136,981.57	.....	136,981.57
20,123.07	21,126.41	.....	21,126.41	23,930.64	.....	23,930.64	25,091.08	.....	25,091.08	27,419.52	.....	27,419.52
4,342.24	3,942.05	.....	3,942.05	4,798.76	.....	4,798.76	3,292.95	.....	3,292.95	3,534.84	.....	3,534.84
4,147.50	4,896.81	.....	4,896.81	5,483.73	.....	5,483.73	5,861.76	.....	5,861.76	6,225.69	.....	6,225.69
852.50	892.88	.....	892.88	1,327.47	.....	1,327.47	818.29	.....	818.29	540.59	.....	540.59
13,448.91	13,410.55	.....	13,410.55	15,487.38	.....	15,487.38	14,061.94	.....	14,061.94	13,434.49	.....	13,434.49
1,891.79	2,056.57	.....	2,056.57	3,048.43	.....	3,048.43	3,338.65	.....	3,338.65	4,010.08	.....	4,010.08
247.33	244.69	.....	244.69	214.58	.....	214.58	112.50	.....	112.50	.....	.....	.....
187.21	338.38	.....	338.38	304.50	.....	304.50	210.41	.....	210.41	193.33	.....	193.33
1,905.76	1,801.62	.....	1,801.62	.....	.....	.....	.....	.....	.....	.....	.....	.....
1,073.95	1,530.97	.....	1,530.97	2,177.28	.....	2,177.28	2,330.94	.....	2,330.94	3,077.02	.....	3,077.02
3,812.83	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
42.05	4.78	.....	4.78	1,371.31	.....	1,371.31	145.24	.....	145.24	309.82	.....	309.82
253.29	446.21	.....	446.21	591.50	.....	591.50	405.14	.....	405.14	1,115.59	.....	1,115.59
870.71	393.14	.....	393.14	710.80	.....	710.80	882.64	.....	882.64	824.29	.....	824.29
.....	17,426.06	17,426.06	.....	20,679.02	20,679.02	.....	31,258.17	31,258.17	.....	24,495.79	24,495.79	.....
.....	3,124.43	3,124.43	.....	5,440.37	5,440.37	.....	3,017.67	3,017.67	.....	2,600.53	2,600.53	.....
.....	480.43	480.43	.....	567.23	567.23	.....	818.01	818.01	.....	1,174.18	1,174.18	.....
.....	2,345.81	2,345.81	.....	3,647.89	3,647.89	.....	2,559.49	2,559.49	.....	1,863.71	1,863.71	.....
.....	202.08	202.08	.....	567.05	567.05	.....	50.72	50.72	.....	51.37	51.37	.....
.....	413.46	413.46	.....	397.47	397.47	.....	420.37	420.37	.....	574.46	574.46	.....
.....	1,948.67	1,948.67	.....	6,933.58	6,933.58	.....	3,094.34	3,094.34	.....	4,944.69	4,944.69	.....
.....	4,194.86	4,194.86	.....	5,210.77	5,201.77	.....	3,978.84	3,978.84	.....	3,357.13	3,357.13	.....
.....	462.85	462.85	.....	.....	.....	.....	516.67	516.67	.....	.....	.....	.....
7,371.00	5,778.92	.....	5,778.92	4,395.03	.....	4,395.03	4,267.34	.....	4,267.34	4,216.86	.....	4,216.86
13,600.86	9,457.70	.....	9,457.70	8,306.19	.....	8,306.19	8,473.15	.....	8,473.15	9,064.18	.....	9,064.18
2.80	2.56	.....	2.56	2.36	.....	2.36	2.25	.....	2.25	2.52	.....	2.52
361.82	179.88	.....	179.88	108.93	.....	108.93	140.72	.....	140.72	211.09	.....	211.09
301.54	246.32	.....	246.32	192.42	.....	192.42	220.34	.....	220.34	319.89	.....	319.89
1,832.51	1,871.25	.....	1,871.25	1,588.50	.....	1,588.50	1,477.40	.....	1,477.40	1,956.81	.....	1,956.81
222.85	105.17	.....	105.17	265.85	.....	265.85	674.12	.....	674.12	355.92	.....	355.92
11,517.16	8,880.08	.....	8,880.08	8,903.93	.....	8,903.93	7,848.94	.....	7,848.94	8,879.22	.....	8,879.22
3,583.32	3,035.73	.....	3,035.73	3,395.30	.....	3,395.30	4,391.96	.....	4,391.96	3,653.18	.....	3,653.18
3,069.67	3,199.31	.....	3,199.31	3,007.25	.....	3,007.25	2,912.25	.....	2,912.25	2,953.97	.....	2,953.97
8,800.27	10,286.63	.....	10,286.63	11,472.43	.....	11,472.43	10,915.08	.....	10,915.08	10,944.29	.....	10,944.29
287.97	322.14	.....	322.14	337.31	.....	337.31	329.83	.....	329.83	349.79	.....	349.79
4,946.03	5,262.79	.....	5,262.79	5,754.86	.....	5,754.86	5,208.25	.....	5,208.25	6,003.65	.....	6,003.65
1,775.92	2,002.37	.....	2,002.37	2,157.84	.....	2,157.84	2,225.50	.....	2,225.50	2,275.84	.....	2,275.84
231.64	204.43	.....	204.43	127.37	.....	127.37	239.11	.....	239.11	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	76.72	.....	76.72	115.38	.....	115.38
.....	2,410.81	2,410.81	.....	2,798.94	2,798.94	.....	2,541.00	2,541.00	.....	2,636.29	2,636.29	.....
.....	36.94	36.94	.....	36.94	36.94	.....	41.70	41.70	.....	55.49	55.49	.....
745.97	1,384.80	.....	1,384.80	1,453.93	.....	1,453.93	1,224.21	.....	1,224.21	753.45	.....	753.45
651.00	469.14	.....	469.14	689.92	.....	689.92	325.00	.....	325.00	.....	.....	.....
	18.84	18.84										

.70	1,273.41	2,437.20	$ 1,342.20	1,095.00	3,338.89	1,715.20	920.00	1,500.00		1,500.00	1,500.00		1,500.00
.51		72,878.61	72,878.61		75,713.10	75,713.10	1,623.69	2,802.58	$ 1,462.11	1,340.47	2,455.55	$ 1,246.09	1,209.46
.12		121,427.64	121,427.64		129,908.84	129,908.84		81,851.13	81,851.13		82,925.91	82,925.91	
.17	13,332.44	13,209.63	1,005.25	12,204.38	13,237.21	1,007.35	12,229.86	13,790.95	1,049.49	12,741.46	14,144.19	1,076.37	13,067.82
	3,479.43	3,986.79		3,986.79	12,683.28		12,683.28						
.19		15,277.80	15,277.80		56,250.00	56,250.00		56,250.00	56,250.00		56,250.00	56,250.00	
.24		2,904.35	2,904.35										
	1,782.00	1,419.66		1,419.66	1,141.08		1,141.08	1,141.08		1,141.08	1,141.08		1,141.08
	709.88	1,383.82		1,383.82	1,841.81		1,841.81	2,245.37		2,245.37	1,586.88		1,586.88
	122.23	128.60		128.60	169.69		109.69	117.35		117.35	98.47		98.47
	242.62	277.29		277.29	182.95		182.95	216.61		216.61	203.75		203.75
	692.82	426.17		426.17	198.76		198.76	155.53		155.53	109.33		109.33
	1,232.72	1,653.61		1,653.61	1,457.86		1,457.86	1,453.04		1,453.04	1,449.12		1,449.12
	6.83	849.90		849.90	914.67		914.67	906.31		906.31	995.10		995.10
.13	60.93	1,403.64	1,403.64		265.62	265.62		265.62	265.62		125.00	125.00	
	132,239.82	137,133.42		137,133.42	140,644.53		140,644.53	140,393.55		140,393.55	136,981.57		136,981.57
	20,123.07	21,126.41		21,126.41	23,930.64		23,930.64	25,091.08		25,091.08	27,419.52		27,419.52
	4,342.24	3,942.05		3,942.05	4,798.76		4,798.76	3,292.95		3,292.95	3,534.84		3,534.84
	4,147.50	4,896.81		4,896.81	5,483.73		5,483.73	5,861.76		5,861.76	6,225.69		6,225.69
	852.50	892.88		892.88	1,327.47		1,327.47	818.29		818.29	540.59		540.59
	13,448.91	13,410.55		13,410.55	15,487.38		15,487.38	14,061.94		14,061.94	13,434.49		13,434.49
	1,891.79	2,056.57		2,056.57	3,048.43		3,048.43	3,338.65		3,338.65	4,010.08		4,010.08
	247.33	244.69		244.69	214.58		214.58	112.50		112.50			
	187.21	338.38		338.38	304.50		304.50	210.41		210.41	193.33		193.33
	1,905.76	1,801.62		1,801.62									
	1,073.95	1,530.97		1,530.97	2,177.28		2,177.28	2,330.94		2,330.94	3,077.02		3,077.02
	3,812.83												
	42.05	4.78		4.78	1,371.31		1,371.31	145.24		145.24	309.82		309.82
	253.29	446.21		446.21	591.50		591.50	405.14		405.14	1,115.59		1,115.59
	870.71	393.14		393.14	710.80		710.80	882.64		882.64	824.29		824.29
.73		17,426.06	17,426.06		20,679.02	20,679.02		31,258.17	31,258.17		24,495.79	24,495.79	
.28		3,124.43	3,124.43		5,440.37	5,440.37		3,017.67	3,017.67		2,600.53	2,600.53	
.55		480.43	480.43		567.23	567.23		818.01	818.01		1,174.18	1,174.18	
.98		2,345.81	2,345.81		3,647.89	3,647.89		2,559.49	2,559.49		1,863.71	1,863.71	
.20		202.08	202.08		567.05	567.05		50.72	50.72		51.37	51.37	
.60		413.46	413.46		397.47	397.47		420.37	420.37		574.46	574.46	
.11		1,948.67	1,948.67		6,933.58	6,933.58		3,094.34	3,094.34		4,944.69	4,944.69	
.85		4,194.86	4,194.86		5,210.77	5,201.77		3,978.84	3,978.84		3,357.13	3,357.13	
.04		462.85	462.85					516.67	516.67				
	7,371.00	5,778.92		5,778.92	4,395.03		4,395.03	4,267.34		4,267.34	4,216.86		4,216.86
	13,600.86	9,457.70		9,457.70	8,306.19		8,306.19	8,473.15		8,473.15	9,064.18		9,064.18
	2.80	2.56		2.56	2.36		2.36	2.25		2.25	2.52		2.52
	361.82	179.88		179.88	108.93		108.93	140.72		140.72	211.09		211.09
	301.54	246.32		246.32	192.42		192.42	220.34		220.34	319.89		319.89
	1,832.51	1,871.25		1,871.25	1,588.50		1,588.50	1,477.40		1,477.40	1,956.81		1,956.81
	222.85	105.17		105.17	265.85		265.85	674.12		674.12	355.92		355.92
	11,517.16	8,880.08		8,880.08	8,903.93		8,903.93	7,848.94		7,848.94	8,879.22		8,879.22
	3,583.32	3,035.73		3,035.73	3,395.30		3,395.30	4,391.96		4,391.96	3,653.18		3,653.18
	3,069.67	3,199.31		3,199.31	3,007.25		3,007.25	2,912.25		2,912.25	2,953.97		2,953.97
	8,800.27	10,286.63		10,286.63	11,472.43		11,472.43	10,915.08		10,915.08	10,944.29		10,944.29
	287.97	322.14		322.14	337.31		337.31	329.83		329.83	349.79		349.79
	4,946.03	5,262.79		5,262.79	5,754.86		5,754.86	5,208.25		5,208.25	6,003.65		6,003.65
	1,775.92	2,002.37		2,002.37	2,157.84		2,157.84	2,225.50		2,225.50	2,275.84		2,275.84
	231.64	204.43		204.43	127.37		127.37	239.11		239.11			
								76.72		76.72	115.38		115.38
.54		2,410.81	2,410.81		2,798.94	2,798.94		2,541.00	2,541.00		2,636.29	2,636.29	
.94		36.94	36.94		36.94	36.94		41.70	41.70		55.49	55.49	
	745.97	1,384.80		1,384.80	1,453.93		1,453.93	1,224.21		1,224.21	753.45		753.45
	651.00	469.14		469.14	689.92		689.92	325.00		325.00			
		16.84	16.84		6.17	6.17		25.30	25.30		7.76	7.76	
	31.29	168.58		168.58	36.61		36.61	2.63		2.63	99.64		99.64
		370.74	370.74		598.97	598.97		518.79	518.79		727.35	727.35	
	30.25	108.26		108.26	14.05		14.05	28.10		28.10	28.10		28.10
.00		8,277.15	8,277.15		24.00		24.00	97.45		97.45			
		19.16	19.16		289.22	289.22							
.2	$303,765.72	$554,116.43	$257,969.78	$296,146.65	$625,302.35	$312,812.35	$312,490.00	$611,448.76	$317,365.31	$294,083.45	$606,932.78	$311,709.15	$295,223.63

[fol. 153] Miscellaneous Administrative Expenses:

182. The amounts eliminated from this item in the years 1931 and 1929, respectively, represent non-recurring expenditures. The inclusion of the total amount represented by these items would provide for an annual expenditure which does not occur in that amount each year. An amortized expenditure on account of these items has been considered in arriving at the reasonable expenses hereinafter found.

Donations and Subscriptions:

183. The eliminations from this item are for the reason that the particular amount involved represents contributions to charity which, if respondent desires to make, should be borne by its owners rather than its patrons, or a contribution to some organization whose principal activities are lobbying, or a contribution to some organization such as the United States Chamber of Commerce whose activities are so removed from the business of operating a stockyard that the service rendered, if any, is not properly classible as necessary in the conduct of a stockyard.

Taxes:

184. All taxes have been eliminated from the above table of expenses for the reason that the matter of the tax expense reasonably to be anticipated in the future is considered separately and included hereinafter.

Repairs and Depreciation:

185. All amounts representing expenditures for repairs and provision for depreciation reserve are eliminated for the reason that an amount to cover these items is considered separately and included hereinafter.

[fol. 154] Insurance:

186. The amounts eliminated from this item represent the cost of insurance on structures hereinbefore found to be not used and useful.

Bond Interest:

187. This item is eliminated in its entirety for the reason that it is covered by the fair return hereinbefore found.

Bond Discount:

188. This item entirely is eliminated for the reason that it represents annual contributions to cover a discount taken upon an issue of bonds. The rate of return hereinbefore found is arrived at on the basis of being sufficient to enable respondent to sell its securities at their full par value. If respondent elects to offer a rate of interest on its bonds which causes them to sell below par the interest plus the discount spread over the life of the bonds is but a return on the bonds. Therefore, to include this item in the operating expense would be to duplicate a provision that already has been made in the fair return.

Fiscal Agents, Registrars, etc.:

189. The amounts eliminated in connection with this item are capital, not operating expenses. To include the expenses which here are [illegible]ted would be to take into consideration costs incurred by respondent in connection with obtaining capital wherewith to procure its property.

[fol. 155] Miscellaneous Outside Real Estate—Casualty Insurance, Outside Real Estate:

190. These expenses are eliminated because they relate to property found to be not used and useful.

Cost of Shoes Sold Employees:

191. This represents the cost of a commodity from the sale of which was received an income greater than the cost. Both are eliminated for the reason that they have no connection with the operation of the stockyard.

Bond Issue Expense:

192. This item is eliminated in its entirety for the reason heretofore stated relative to the item, Fiscal Agents and Registrars, etc.

Interest:

193. This was paid as penalty for underpayment of income tax and is, therefore, not properly coverable into rates.

193a. Upon a consideration of the expenses incurred by respondent during the years 1927 to 1932, both inclusive, which have been discussed heretofore and a consideration of the volume of business used as a rate factor hereinafter and upon the facts in the record as a whole, it is found that $302,500 is a reasonable amount to be considered as a rate factor for reasonable operating expenses other than taxes and provision for depreciation and repairs.

[fol. 156] Necessary Revenue

193b. The following is a summary of the amounts heretofore found to be reasonable and for which a schedule of reasonable rates must provide:

Fair return on fair value of respondent's used and useful property		$192,010
Operating expenses:		
Repairs and annual contribution to a reserve for depreciation	$80,000	
Taxes	43,767	
All other operating expenses	302,500	
		426,267
		$618,277

XII

Volume of Business

194. The revenues received by respondent arise from charges assessed for yarding livestock arriving fresh from the country, from charges made for yarding livestock resold or reweighed and from yardage charges made for the use of feeding facilities. In addition to yardage revenues, respondent derives profit from the sale of feed and bedding, It receives revenues also from the rendering of special services heretofore discussed.

Livestock Received Fresh From the Country

195. The number of head of livestock arriving fresh from the country on which the respondent assessed charges during each of the six years from 1927 to 1932 is as follows:

[fol. 157]

Year	Cattle	Calves	Hogs	Sheep
1932	343,464	77,807	1,148,990	1,210,019
1931	406,946	77,412	1,227,341	1,443,881
1930	435,908	99,831	1,367,410	1,517,708
1929	471,074	92,054	1,541,710	1,460,732
1928	474,352	87,029	1,594,606	1,430,495
1927	511,008	101,579	1,359,683	1,215,028

Livestock Resold or Reweighed

196. The tariff of the respondents provides for a charge on livestock resold in the commission division equal to one-half of that charged upon livestock arriving by rail. The testimony of witnesses for the respondent is to the effect that respondent makes a charge on all resales, except on livestock going to the country, of one-half the original yardage, irrespective of whether resale occurs in the commission division or in other parts of the stockyard. The evidence indicates that respondent is not making charges for resales in accordance with the provisions of its published tariff. The record shows for the years 1931 and 1932 the number of livestock of each species to which a general resale or reweigh charge would apply. The record shows the total number of head of each species of livestock handled by dealers for the years 1931 to 1932 and also the total number of head of each species shipped by dealers on consignment to other markets. The difference represents the number upon which a general resale or reweigh charge may be made applicable. For the year 1931 the number of head of livestock to which a reweigh or resale charge would apply was 91,730 head of cattle and calves, 267,730 hogs and 4,059 sheep. The corresponding figures for 1932 were 76,560 cattle, 180,393 hogs and 1,939 sheep. The average of these figures for the two years is 84,154 cattle, 224,061 hogs and 2,999 sheep.

[fol. 158] Livestock Handled in Feed Lot Facilities

197. Prior to June, 1930, respondent leased on the basis of a stipulated rental the use of various feed lot facilities to different operators handling this class of livestock. Subsequent to that date, it placed a provision in its tariff making a charge for the use of feed lot facilities of 5¢ per head

on sheep and hogs and 15¢ per head on cattle. Consequently, the number of head upon which is assessed the per head charge provided for by the tariff is shown only for the periods subsequent to the date the tariff became effective. The same is, of course, true of the revenues collected under the tariff. During the period in which the tariff was applicable the number of head of livestock handled in the feed lot facilities was as follows:

	1930 (6 mos.)	1931	1932
Cattle	4,086	4,998	2,321
Hogs	357	1,644	1,198
Sheep	39,882	121,901	52,385

198. The principal feeding business as shown by the above figures is the feeding of sheep. This business has, of course, been adversely affected by the general economic conditions which have prevailed since early in 1930. Prior to this date the number of sheep handled in these feed lots was materially greater than it has been since a per head yardage charge was made applicable. The manager of respondent's company, appearing as a witness in the first hearing, testified that in 1928 approximately 247,000 sheep were handled in these feed lots.

[fol. 159] Fluctuations in Market Receipts

199. The record shows the number of head of livestock of each species received each year for the 24-year period from 1908 to 1931, inclusive. The receipts of livestock by the respondent move in cycles. The receipts of cattle increased from a low point in 1914 to a high point in 1918, and then declined to another low point in 1921. Following this year, there was an increase up to 1923, after which for a period of about two years receipts remained stationary. Following 1925 and continuing until 1931, there was a decrease. The number of receipts in 1931 was equal approximately to those in 1916. In the case of calves, receipts increased from 1914 to 1925 except for 1920 and 1921, and since that time, except for the years 1929 and 1930, there has occurred a decrease, the receipts in 1931 being about equal to those in 1918. With respect to hogs, low points and high points in the receipts occurred at shorter intervals. There was a decline from 1912 to 1915. Other low

points occurred in 1917, 1921 and 1927. High points occurred in 1916, 1918, 1923 and 1928. Since 1928, the tendency has been downward.

200. The conclusion to be drawn from these facts is that fluctuations in receipts are a characteristic of the business in which the respondent is engaged and that the years immediately preceding the dates of the hearings were years of comparatively low receipts. There are factors in the livestock situation which create some doubt as to whether in the near future the receipts of the respondent will increase to a point comparable to that of their maximum receipts in the past. It is a reasonable conclusion, however, that there will be an increase due to the cyclical trend inherent in the business in which the respondent is engaged.

[fol. 160] Volume Used as Rate Factor

201. No prediction is here made as to the exact number of head of livestock which will be received or handled by the respondent in the future. The volume set forth below constitutes in the light of all the information in the record the volume factor used herein in determination of the reasonableness of rates.

	Truck	Rail	Resales	Feed lot
Cattle	260,000	140,000	75,000	5,000
Calves	70,000	15,000	5,000	
Hogs	1,206,250	68,750	200,000	1,200
Sheep	300,000	900,000	2,500	85,000

Unloading and Loading

202. The revenues received by respondent for unloading and loading are derived from those of its receipts which arrive by rail and those of its shipments which move out by rail. The tendency in recent years has been towards an increase in trucked-in livestock and a decrease in rail receipts. This change has resulted in a decline in revenues incident to the unloading of livestock. The loading of livestock shipped out by rail has been affected to some extent by the tendency to ship livestock to nearby points by truck. As has been stated the charge for unloading and loading has been increased. Had there been no change in the unloading and loading charges a given number of receipts of

livestock under the present mode of arrival would have generated less revenues than the same number would in the past. The higher rate now in effect will tend to off-set somewhat the loss in unloading and loading revenues on account of the change in method of arrival.

[fol. 161] Feed

203. Generally speaking, a given number of livestock arriving at market by truck consumes less feed than it would had it arrived by rail. Feed sold by the respondent consists of that supplied to the commission men, to dealers, who generally hold their livestock longer than the commission men hold that consigned to them, and to the Anchor Serum Company. The amount of feed handled by the respondent during the years 1928 to 1932, inclusive, except corn and miscellaneous feed sold to the Anchor Serum Company and corn milled, is as follows:

[fol. 161]

	1927	1928	1929	1930	1931	1932
Hay (Cwt.)	92,680	98,307	87,005	76,897	69,792	54,222
Corn (Bu.)	131,503	138,608	123,387	104,822	80,552	56,215
Oats (Bu.)	2,423	2,868	2,565	2,140	2,899	1,219
Bedding (Bale)	18,153	18,776	20,611	15,913	14,990	11,830
Milled and Mis. Feed (Cwt.)	4,228	4,917	4,130	4,479	5,328	7,818

204. Due to the changes which have taken place in the business it is not to be expected that the sales of corn and hay in the future will reach the proportions attained during the earlier years indicated above. For the purpose of determination of the reasonableness of rates the quantity of feed used as a rate factor is as follows:

Hay—60,000 cwt.
Corn—65,000 bu.
Oats—2,000 bu.
Bedding—14,500 bales
Misc. Feed—5,000 cwt.

Special Services

205. The stockyard company renders certain special services hereinbefore discussed. The revenue derived from the rendering of these services has not varied greatly dur- [fol. 162] ing the six-year period for which information is available in the record.

XIII

Unreasonableness of Existing Rates

206. An application of the rates now being charged by the respondent to the volume of business hereinbefore discussed produces revenues in excess of those necessary to pay the reasonable expenses incurred in handling that business and a fair return upon the fair value of respondent's property. Moreover, under the existing schedule shippers of livestock who consign their animals to commission men are charged more by the respondent for the use of its facilities in handling such livestock for a shorter period of time than are those who use that portion of its facilities hereinbefore referred to as feed lots for a much longer period of time. It is found that the schedule of rates and charges now in effect is unreasonable and unjustly discriminatory.

XIV

Reasonable Rates

207. On the basis of all the foregoing and the entire record in this proceeding, it is found and concluded that the following constitute and are the maximum reasonable rates and charges for the following services rendered by the respondent, namely:

[fol. 163]

Yardage

	Cattle	Calves	Hogs	Sheep and Goats	Horses and Mules
Received by vehicle on on foot	35¢	22¢	12¢	8¢	35¢
Received by rail	27¢	17¢	8¢	6¢	35¢
Resold or reweighed for purpose of sale	17½¢	11¢	6¢	4¢	17½¢
Handled in feedlot facilities	60¢	..	38¢	38¢	.....

Feed and Bedding

Hay	Current market price, f.o.b. stockyards, plus 60¢ per cwt.
Corn	Current market price, f.o.b. stockyards, plus 50¢ per bushel
Oats	Current market price, f.o.b. stockyards, plus 25¢ per bushel
Mill Feed	Current market price, f.o.b. stockyards, plus 80¢ per cwt.
Bedding	Current market price, f.o.b. stockyards, plus 40¢ per bale

The charge made for the above by respondent shall be divisible by 5 and respondent shall amend said charges when the margin between the cost and sale price of feed and bedding varies $.05 from the margin as specified above.

Dipping and Spraying

Cattle	35¢ per head, minimum	$35.00
Calves	15¢ " " "	35.00
Hogs	5¢ " " "	
Sheep or Goats	5¢ " " "	8.00

Hog Immunizing Plant

Use of services for vaccinating hogs ..... 10¢ per head

Cattle Testing Barn

Cattle tested for tuberculosis and other diseases:
Use of specially equipped barns, including feed, bedding and water ..... $1.00 per head

[fol. 164]

Cleaning and Disinfecting

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys	0.37 per 100 square feet
Wagons and small trucks	.75 each
Trucks of 2 tons and over	1.00 each

Bedding and Shelter Pens

Bedded pens for hogs	$1.00 per car per night
Bedded pens for hogs	.50 per half carload per night
Bedded pens for hogs, truck division	.15 per pen per night
Shelter pens for cattle	.10 per head
Shelter pens for calves	.05 per head each 24 hours

$2.00 minimum each pen.

208. The revenues of the respondent arising from the application to its business of the rates set forth above and the miscellaneous revenues arising from stockyard operations, charges for which are not set forth in the schedule, are as follows:

Yardage	$412,775
Profit on feed and bedding, including that sold to Anchor Serum Company	82,800
Loading and Unloading	22,500
Feedlot Operations	35,756
Miscellaneous stockyard operations	68,000
Total	$621,831

The revenues necessary to meet reasonable expenses and a fair return on the fair value of respondent's used and useful property as heretofore found are:

Miscellaneous Operating Expenses	$302,500
Repairs and Depreciation	80,000
Taxes	43,767
	$426,267
Fair Return	192,010
	$618,277

[fol. 165] The schedule found above to be reasonable assesses a resale charge on all those who receive the services incident thereto, and not on only a part of them, as is the case with the schedule now in effect. It assesses also on those to whom feedlot service is furnished a charge sufficient to cover repairs and depreciation and pay a fair return on the value of that portion of the property used exclusively by them, and does not levy these expenses mainly on other users of the facilities, as does the schedule now in effect.

Order

It is, therefore, ordered that the respondent, on and after thirty days from the date of this order, cease and desist from demanding or collecting for yardage, feed or bedding, the rate or rates shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture on the 30th day of September, 1929, and designated and known as St. Joseph Stock Yards Company Tariff No. 5.

It is further ordered that the respondent on and after thirty days from the date of this order shall not publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rates and charges hereinbefore found and determined to be just and reasonable for the furnishing of such service.

It is further ordered that at least ten days prior to the thirtieth day from the date of this order the respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule effective on the thirtieth day

from the date of this order showing all rates and charges for [fol. 166] the stockyard services furnished by respondent at the St. Joseph Stockyards, St. Joseph, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such service.

It is further ordered that, for the reasons hereinbefore stated, respondent's petition for a rehearing in this matter be, and the same hereby is denied.

It is further ordered that a copy of this order be transmitted by registered mail to respondent.

In witness whereof the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 4th day of May, 1934.

H. A. Wallace, Secretary of Agriculture.

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed May 13, 1934

Come now the defendants in the above entitled cause and make answer to the petition hereinbefore filed as follows:

1. Defendants admit the allegations contained in Paragaphs I to IV, inclusive, of said petition.

2. Defendants admit the allegations contained in Paragraph V of said petition, except that defendants say that "Exhibit A" attached to said petition is not a true and correct copy of the Findings, Conclusion and Order issued by the Secretary of Agriculture in Docket No. 298, on May 4, 1934, in that some substantial errors have been made in the printing thereof. Defendants say that they will later offer a memorandum to this Court calling attention to such errors so that appropriate corrections may be made.

3. Answering Paragraph VI of said petition, defendants say that the matters stated therein are conclusions of law which require no answer.

4. Defendants admit the allegations contained in Paragraph VII of said petition. Defendants say, however, that [fol. 168] since the filing of said petition, to wit, on May 16, 1934, the Secretary of Agriculture has issued an order extending the effective date of the order of May 4, 1934, herein sought to be set aside by petitioner. Said order of the Secretary, dated May 16, 1934, provides in part as follows:

It is further ordered that not later than the fifth day of July, 1934, respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule, effective ten days from the date of so filing, showing all rates and charges for the stockyard services furnished by respondent at the St. Joseph Stockyards, St. Joseph, Missouri, and all rules and regulations changing, affecting or determining such rates or charges and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such services.

5. Defendants deny each and every allegation contained in Paragraph VIII of said petition.

6. Answering Paragraph IX of said petition, defendants deny that the Findings, Conclusion and Order of the Secretary are contrary to law, confiscatory of petitioner's property, or that they deprive petitioner of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States or that they are void and of no effect for the reasons stated in the sub-paragraphs of Paragraph IX of said petition, or for any other reason or reasons.

(a) Answering Sub-paragraph (A) of Paragraph IX of said petition, defendants deny each and every allegation contained therein.

(b) Answering Sub-paragraph (B) of Paragraph IX of said petition, defendants say that the Secretary made his determination as to the total amount of land used and useful by petitioner in performing stock yard services in square feet and not in acres, and that he determined that 4,410,361 square feet of land is used and useful by petitioner in performing stock yard services, but defendants admit that 101,-

248 acres is substantially the correct number of acres allowed; otherwise defendants deny each and every allegation contained in said Sub-paragraph (B).

[fol. 169] (c) Answering Sub-paragraph (C) of Paragraph IX of said petition, defendants admit that the Secretary found that the value of the land used and useful by petitioner in performing stock yard services is $647,547.84; otherwise defendants deny each and every allegation contained in said Sub-paragraph (C).

(d) Answering Sub-paragraph (D) of Paragraph IX of said petition, defendants deny each and every allegation contained therein. Defendants say, however, that petitioner owned 88.308 acres of land claimed by petitioner to be used and useful in the performance of stock yard services but found by the Secretary to be not used and useful in the performance of such services, and that the value of said 88.308 acres was not included by the Secretary in the rate base upon which the schedule of maximum reasonable rates and charges is predicated.

(e) Answering Sub-paragraph (E) of Paragraph IX of said petition, defendants admit that the Secretary found that the cost of reproduction new less depreciation of petitioner's used and useful structural property is $2,039,616. Defendants further admit that certain structural property owned by petitioner was found by the Secretary to be not used and useful for stock yard services and that such property included the building used for a stock yard hotel, the building wherein a harness shop is operated, the building wherein the stock yard journal is published and a garage and various and sundry other items of petitioner's structural property, and that the value of such structural property found by the Secretary to be not used and useful was excluded from the value of petitioner's property for rate making purposes. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (E).

(f) Answering Sub-paragraph (F) of Paragraph IX of said petition, defendants admit that the Secretary found [fol. 170] that no allowance should be made for pre-organization expenses and cost of financing; otherwise defendants deny each and every allegation contained in said Sub-paragraph (F).

(g) Answering Sub-paragraph (G) of Paragraph IX of said petition, defendants admit that the Secretary made no separate allowance for so-called going concern value, but defendants say that there is included in the rate base a substantial allowance for going concern value although the allowance for going concern value is not segregated and labelled as such. For a more complete statement of the treatment given by the Secretary to the element of so-called going concern value, defendants respectfully refer to Paragraphs 153 to 160 of the Secretary's order, which paragraphs contain the Secretary's findings with respect to going concern value. Defendants say that the Secretary's findings contained in said paragraphs of the order with respect to going concern value are supported by the evidence, and by the weight of the evidence. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (G).

(h) Answering Sub-paragraph (H) of Paragraph IX of said petition, defendants say that the Secretary allowed as a rate factor the sum of $80,000 to be included in petitioner's annual expenses to cover repairs and provide for a depreciation reserve, and that the Secretary found that the amount expended by petitioner on account of repairs on its used and useful property from 1922 to 1932, inclusive, averaged approximately $38,500 annually. Defendants say that if the same yearly average for repairs is maintained, petitioner, under the Secretary's order, will have available $41,500 as a depreciation reserve; and defendants say that the sum of $80,000 to cover repairs and depreciation reserve is adequate, and is supported by the evidence, and by [fol. 171] the weight of the evidence; otherwise defendants deny each and every allegation contained in said Sub-paragraph (H).

(i) Answering Sub-paragraph (I) of Paragraph IX of said petition, defendants say that the Secretary found that $302,500 was a reasonable amount to be considered as a rate factor for reasonable operating expenses other than taxes and provision for depreciation and repairs; that one of the factors considered in making such finding was the operating expenses (other than for taxes, repairs and depreciation reserve) which petitioner actually incurred in the respective years 1929 to 1932, inclusive; and that for each of said years the Secretary eliminated from considera-

tion expenses actually incurred but which for the reasons stated in the aforesaid Findings, Conclusion and Order he deemed improper for consideration in determining the reasonable operating expenses to be used as a rate factor. Defendants deny that the conclusion thus reached represents an average of expenses incurred over the period 1927 to 1932, or any other period, and say that it constitutes a normal drawn from the expenses incurred in each of the aforesaid years, viewed in the light of all of the facts and circumstances shown in the record; all of which is more fully shown by Paragraphs 181 to 193a of the aforesaid Findings, Conclusion and Order. Defendants admit that the valuation of petitioner's property for rate making purposes as found in said Findings, Conclusion and Order represents a spot value as of August 1, 1932, but deny that such spot value represents a value much lower than the average real and true value of petitioner's property during the years 1927 to 1932, inclusive. Defendants say that said spot value constitutes a true normal value as of August 1, 1932, without reflecting temporary conditions of depression or stagnation. Defendants admit that in finding cost of reproduction new less depreciation of petitioner's structural property the Secretary used spot prices as of August [fol. 172] 1, 1932; but deny that the average fair value of petitioner's structures during the years 1927 to 1932, inclusive, was greater than the value found for said structures by the Secretary as of August 1, 1932. Defendants say that the amount found by the Secretary as the cost of reproduction new less depreciation of petitioner's structural property constitutes a true normal of the cost thereof without reflecting temporary conditions of depression or stagnation. Except as herein expressly admitted, defendants deny each and every allegation of said Sub-paragraph (I)

(j) Answering Sub-paragraph (J) of Paragraph IX of said petition, defendants admit that the Secretary found that seven per cent is a reasonable rate of return to be used in the determination of reasonable rates to be charged by petitioner; otherwise defendants deny each and every allegation contained in said Sub-paragraph (J).

(k) Answering Sub-paragraph (K) of Paragraph IX of said petition, defendants admit that the Secretary found

that the reasonable net operating income of petitioner is $192,010 per annum. Defendants say that this amounts to seven per cent of the fair value of petitioner's used and useful property, which was found by the Secretary to be $2,743,000. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (K).

(l) Answering Sub-paragraph (L) of Paragraph IX of said petition, defendants admit that the rates and charges prescribed by the Secretary are based upon the assumption that petitioner will avail itself of the full maximum reasonable rates and charges permitted by the Secretary's order, which includes an allowance of one-half the regular yardage charge to be charged against traders and speculators on account of live stock resold or reweighed for purposes of sale. Defendants say that the Secretary's order does not require that petitioner collect the maximum rates and [fol. 173] charges found therein to be reasonable, but defendants say that the Secretary does have the power to prescribe reasonable and non-discriminatory rates and charges and to order that parties shall cease and desist from charging unreasonable and discriminatory rates. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (L).

(m) Answering Sub-paragraph (M) of Paragraph IX of said petition, defendants admit that the Secretary has found that the rates and charges now in effect for yardage are unjustly discriminatory because the shippers of live stock who consign their animals to commission men are charged by petitioner for the use of its facilities in handling such live stock for a shorter period of time than are those who use petitioner's facilities for a longer period of time. Defendants admit that the Secretary's order prescribed a schedule of maximum reasonable rates and charges, and that petitioner may charge less than the maximum if it so desires, and that under the order petitioner may continue to impose no yardage charge upon traders and speculators and non-compensatory yardage charges upon portions of feed lots, if petitioner so desires. Defendants say, however, that under the Secretary's order the shippers of live stock to the market will not be required to pay for the support of the traders and speculators and portions of feed lots if petitioner desires not to charge such

traders and speculators for services rendered to them, or for the use of portions of feed lots. Defendants admit that all unjust discriminations are forbidden by the Packers and Stockyards Act, 1921. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (M).

(n) Answering Sub-paragraph (N) of Paragraph IX of said petition, defendants admit that in Paragraph 207 of the Findings, Conclusion and Order the Secretary prescribes maximum reasonable rates and charges for various services rendered by petitioner in the operation of its stock [fol. 174] yards, said rates and charges varying in amounts according to the particular type of service rendered. Defendants further admit that said rates and charges prescribed by the Secretary constitute in some instances reductions in varying percentages from the rates and charges now made by petitioner, in other instances are the same as the rates and charges made by petitioner, and in other instances exceed the rates and charges now made by petitioner. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (N).

(o) Answering Sub-paragraph (O) of Paragraph IX of said petition, defendants admit that on February 2, 1934, petitioner filed with the Secretary a "Petition for Re-opening and Further Hearing" and that said petition, omitting the caption, is in words and figures as alleged and set forth in said Sub-paragraph (O). Defendants further admit that the Secretary, as part of his Findings, Conclusion and Order, denied said petition for re-opening. Defendants say that the hearing upon which the Findings, Conclusion and Order are based, was held beginning January 10, 1933, and concluding February 16, 1933, and that the findings of the Secretary are based upon the record made at said hearing and upon conditions which existed with respect to the business of the petitioner during a number of years prior to and including 1932. Defendants say that before denying said petition for re-opening the Secretary made an investigation of the allegations contained therein and concluded therefrom that re-opening and further hearing were not required nor justified. The reasons which prompted the Secretary to deny the petition for re-opening and further

hearing are set forth in Paragraphs 6c to 6h of the Secretary's Findings, Conclusion and Order. With respect to the allegation that the order prescribed by the Secretary is to become effective in June, 1934, defendants again refer to the order of the Secretary dated May 16, 1934, extending the effective date for the publication of a new schedule [fol. 175] until July 5, 1934. Defendants deny upon information and belief the allegation that the nature of the services rendered by petitioner in operating its public stock yards, and its income and expenses in connection therewith, have materially changed since the year 1932 and preceding years; that the net operating income of petitioner for the year 1933 was $179,823.82 or less than the reasonable net operating income which the Secretary found petitioner might reasonably earn as a fair return upon its property devoted to stock yard purposes. Except as herein expressly admitted or denied upon information and belief, defendants deny each and every allegation contained in said Sub-paragraph (O).

(p) Answering Sub-paragraph (P) of Paragraph IX of said petition, defendants admit that the Secretary found the fair value of petitioner's property used and useful in the rendition of stock yard services to be $2,743,000 and that a fair return thereon would be $192,010; otherwise defendants deny each and every allegation contained in said Sub-paragraph (P).

(q) Answering Sub-paragraph (Q) of Paragraph IX of said petition, defendants admit that if the order of the Secretary becomes effective and petitioner fails to comply therewith petitioner may be subject to prosecution and incur liability for penalties in amount of $500 per day as against which liability, if the order of the Secretary is not lawful, petitioner will have no adequate protection at law. Defendants say that if petitioner establishes the rates specified in the order of the Secretary it will not be permitted by law to collect rates in excess of those prescribed in the order. Defendants say that the allegation that the rates and charges prescribed in said order will reduce petitioner's revenues approximately $80,000 per year is incompetent, irrelevant and immaterial to the validity of the order and to this suit; nevertheless, defendants deny on information and belief that the substitution of the rates and charges

[fol. 176] specified in the order of the Secretary will result in reductions approximating $80,000 per year. Without specifically answering the remaining allegations of said Sub-paragraph (Q), defendants say that the matter of temporarily suspending the enforcement of the order of the Secretary pending final determination of its lawfulness, is set for hearing before this Court at Kansas City, Missouri, on June 9, 1934, and that the question of restraining or enjoining the enforcement of the order of the Secretary pending final determination will be separately dealt with at that hearing, and that the allegations with respect to matters to be dealt with at that hearing need be neither admitted nor denied.

7. Except as hereinbefore expressly admitted, defendants deny each and every allegation contained in said petition.

Wherefore, having fully answered, defendants pray that the petition be dismissed at the cost of the petitioner, and for the benefit of such other order or orders as the Court may deem appropriate.

Wendell Berge, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Maurice M. Milligan, United States Attorney. J. S. Bohannan, Attorney, Department of Agriculture.

[File endorsement omitted.]

[fol. 177] In United States District Court

[Title omitted]

Memorandum as to Certain Corrections to be Noted in Exhibit "A" to Petition—Filed July 10, 1934

Come now the defendants in the above entitled cause and respectfully ask leave to file this memorandum with respect to certain corrections which ought to be noted in the copy of the Findings, Conclusion and Order contained as "Exhibit A" in the printed copies of the petition hereinbefore filed by petitioner with this court.

In Paragraph 2 of the answer hereinbefore filed by defendants the allegations of Paragraph V of said petition

were admitted, except that defendants said that Exhibit A, attached to said petition, was not a true and correct copy of the Findings, Conclusion and Order issued by the Secretary of Agriculture in Docket No. 298 on May 4, 1934, in that some substantial errors have been made in the printing thereof. Defendants said that they would later offer a memorandum to this court calling attention to such errors so that appropriate corrections might be made.

Defendants have checked word for word the printed copy of the Findings, Conclusion and Order attached as Exhibit A to the petition with the original Findings, Conclusion and Order issued by the Secretary. The following errors and corrections have been noted:

[fol. 178] On page 36 of Exhibit A, paragraph 51, in the fifth line, the words "of land" should be omitted.

On page 46 of Exhibit A, paragraph 70, in the sixth line, the word "deck" should be "dock."

On page 57 of Exhibit A, paragraph 91, in the sixth line, the word "data" should be "date."

On page 64 of Exhibit A, paragraph 99, in the first line the proper name "Frank N. Atkinson" should be "Frank M. Atkinson."

On page 86 of Exhibit A, paragraph 126, in the paragraph in the middle of the page consisting of a single sentence, the figures "$136,904" should be "$186,904."

On page 94 of Exhibit A, paragraph 135, in the eighth line, the word "or" should be "nor."

On page 104 of Exhibit A, paragraph 152, in the third line, between the words "on" and "of" there should be inserted the word "account."

On page 121 of Exhibit A, in the tenth line of the left-hand column of the table, the word "bearing" should be "hearing."

On page 130 of Exhibit A, paragraph 201, in the table at the conclusion of the paragraph, the figure given for hogs arriving by truck is 1,206,250 whereas it should be 1,306,250.

On page 131 of Exhibit A, paragraph 203, in the table at the conclusion of the paragraph, the number of bushels of corn for the year of 1929 is given as 123,387 whereas it should be 125,387.

Attention is called to all of the above errors for the sake of technical accuracy. The errors occurring on pages 130

and 131, in paragraphs 201 and 203, are, however, substantial.

Respectfully submitted, Wendell Berge, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Maurice M. Milligan, United States Attorney.

[File endorsement omitted.]

[fol. 179] In United States District Court for the Western District of Missouri, St. Joseph Division

In Equity. No. 245

St. Joseph Stock Yards Company, Petitioner,

vs.

United States of America and Secretary of Agriculture, Defendants

Decree—Filed May 1, 1935

This case came on to be heard upon the bill and answer and the evidence introduced by the parties and was submitted and taken under advisement by the Court. And the Court, having duly considered the issues made by the pleadings, the evidence introduced, and the argument of counsel, being fully advised in the premises, and having filed herein its memorandum opinion and findings of fact,

It is ordered, adjudged and decreed as follows:

1. That the temporary injunction hereinbefore issued be and it is hereby dissolved;

2. That petitioner's bill be and it is hereby dismissed.

3. That the Court retain jurisdiction of this case for the purpose of determining any proceeding or proceedings to enforce the bond given by petitioner as security for the temporary injunction hereinbefore issued;

4. That the costs of this case be assessed against the petitioner.

May 1, 1935.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING DECREE—Filed May 9, 1935

Upon the suggestion of the petitioner and for the purpose of enabling petitioner to perfect its appeal and to petition the Court in connection therewith for a supersedeas as to the decree hereinbefore entered in this case:

It Is Ordered that the effective date of the decree be and it is suspended for thirty days from the date of this order.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed May 24, 1935

Comes now the petitioner, by its solicitors, R. E. Culver, William N. Strack, and Ross Dean Rynder, and represents to the court that the memorandum opinion and findings of fact of the court in this proceeding, together with the final decree of this court, were entered herein May 1, 1935; that an order was entered May 9, 1935 by said court, staying the said decree for thirty (30) days, in order that petitioner might perfect its appeal to the Supreme Court of the United States; that petitioner is of the opinion that, in order to fully present its appeal to said Supreme Court, this court should either make or decline to make certain additional findings of fact and conclusions of law as of the day of the entry of the memorandum opinion and findings of fact and the decree herein. Counsel for petitioner, therefore, respectfully request the court to make the following supplemental findings of fact and conclusions of law, to be entered of record in this case nunc pro tunc as of the time of the filing of the memorandum opinion and findings of fact and [fol. 182] to become a part of the record in this case upon appeal.

Findings of Fact

1. The Secretary determined in his first decision herein, of July 20, 1931, that said Transit House is used and useful in connection with the operation of petitioner's stock yards.

2. The present use of the Transit House is the same as at the time of the first hearing in this case.

3. The Transit House is a proper convenience for truckers and shippers of live stock to petitioner's yards.

4. Petitioner's officers and directors have considered the Transit House to be a proper and necessary stockyards facility.

5. The value of Zone A of petitioner's property, as fixed by the Secretary, was less than its real and true value by at least $275,164.

6. The illegal use of 76.04 per cent as the average percentage condition of petitioner's structures caused the Secretary to arrive at a value of petitioner's structures of not less than $341,799 below its real and true value.

7. The record contains substantial evidence upon which petitioner's going concern value could be determined other than the testimony of witness Howson.

8. In his first decision in this proceeding, the Secretary found that petitioner had a going concern value of $300,000.

9. There is no evidence of record of any changed condition as to the existence of petitioner's going concern value.

[fol. 183] 10. The failure of the Secretary to allow petitioner anything for the item of going concern value caused him to arrive at a total value of petitioner's property which was at least $273,300 less than its true value.

11. The Secretary found that the cost of reproduction new of petitioner's used and useful structures, as of August 1, 1932, was $2,637,186.

12. The Government engineer who determined said value adopted by the Secretary computed the average composite life of petitioner's structures to be 24.8 years and the annual depreciation to be $113,492.

13. The amount of $41,500 allowed by the Secretary as a part of the annual operating expenses for a depreciation

reserve was less by $67,295 per year than it should have been.

14. The total value of petitioner's used and useful property, as fixed by the Secretary, was at least $1,010,406 less than its real and true value.

15. Petitioner's net operating income for rate making purposes for 1932, as modified by the Secretary, did not exceed $190,656.21, which was less than the fair return, as determined by the Secretary, of $192,010. Consequently, petitioner's rates and charges were not unreasonable in 1932, the last year included in the record before the Secretary.

16. It had been judicially determined in this proceeding that petitioner's rates and charges did not result in unreasonable income during 1930 and the first six months of 1931.

[fol. 184] 17. The evidence offered by the Secretary shows a constant diminution during the six-year period in all sources of petitioner's stockyard revenue, including receipts of live stock upon which yardage is charged, amount of revenue received from sales of feed, and amount of revenue received from miscellaneous stockyards operations.

18. There was no evidence in the record that petitioner's receipts of live stock and other items of income would increase in the future.

19. There was no evidence of record in the hearing before the Secretary upon the question of what increase, if any, might be made in petitioner's feed lot charges.

20. The estimated increase in income from petitioner's feed lot yardage charges was purely speculative and unsupported by any evidence.

21. There was no evidence before the Secretary to support his finding that petitioner would receive a gross income of $25,775 per year from resale and reweigh yardage charges.

22. The evidence shows that at the time of the hearing petitioner was applying a charge upon all live stock resold or reweighed for purpose of sale at its stock yards as great as that prescribed by the Secretary and that for the year 1932 it only produced $4,972.

[fol. 185] Conclusions of Law

1. In a case where rates and charges are prescribed by an administrative tribunal, such as the Secretary of Agriculture, and those rates are challenged by petitioner as being confiscatory, the petitioner is entitled to the independent judgment of the court upon the facts and the law as to whether such prescribed rates and charges amount to the taking of petitioner's property without due process of law.

2. The maintenance of the Transit House by petitioner is a question within the managerial discretion of petitioner's officers and directors.

3. There was no legal evidence in the record before the Secretary upon which to base the finding that petitioner's structures were in a condition of 76.04 per cent as compared with new.

4. Where the record shows that the business has a history of substantial earning capacity which will probably continue in the future, there is an element of value in such a plant over one not thus advanced, which is a property right and should be considered in determining the value of the property upon which the owner has a right to make a fair return; merely evaluating property as the sum of the bare value of the land, physical structures, and working capital, excludes such element of value.

5. The allowance for an annual depreciation reserve must be based upon present value.

6. The Secretary of Agriculture is not authorized by law to fix and determine the amount which petitioner should set aside annually for a depreciation reserve.

[fol. 186] 7. The Secretary is without authority to reduce petitioner's rates and charges when the record conclusively shows that they were not unreasonable at the time of the hearing.

8. In the absence of any evidence of record bearing upon the subject, the action of the Secretary in increasing petitioner's feed lot charges was arbitrary and void.

9. The finding by the Secretary that petitioner's feed lot charges were discriminatory required the Secretary to permit petitioner an alternative method of removing such discrimination; since the Secretary gave petitioner no such alternative, the Secretary's order is void.

R. E. Culver, William N. Strack, Ross Dean Rynder, Solicitors for Petitioner.

May 24, 1935.

[File endorsement omitted.]

[fol. 187] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING FILING OF PETITION FOR SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW BUT REFUSING TO MAKE SAID FINDINGS—Filed May 24, 1935

Under consideration of the petition for supplemental findings of fact and conclusions of law filed by the petitioner herein,

It is ordered

1. That said petition be filed in the record of this case as of May 1, 1935, and become a part of the record on appeal.

2. That each of said findings of fact and conclusions of law be considered refused as of May 1, 1935, and that petitioner be entitled to an exception as of that date.

—— ——, Circuit Judge. —— ——, District Judge.
—— ——, District Judge.

May 24, 1935.

[File endorsement omitted.]

[fol. 188] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PETITION FOR APPEAL—Filed May 24, 1935

To Honorable Stanley F. Reed, Solicitor General of the United States, Washington, D. C.:

You are hereby notified that on the 24th day of May, 1935, at 1:30 o'clock p. m., or as soon thereafter as counsel can

be heard, we shall present to the Honorable Kimbrough Stone, United States Circuit Judge, and the Honorable Albert L. Reeves and Honorable Merrill E. Otis, United States District Judges, the petition of the petitioner herein for an appeal from the final order or decree made and entered in the District Court in the above entitled cause on the 1st day of May, 1935, to the Supreme Court of the United States; and ask that an order be entered herein allowing said appeal, making same returnable within thirty (30) days from May 24, 1935, and granting supersedeas [fols. 189-197] and stay of the order of the Secretary of Agriculture pending the determination of said appeal. A copy of said petition for appeal and of the assignment of errors therein referred to, a copy of the order allowing the appeal, and a copy of the order granting supersedeas and stay of the Secretary's order pending the determination of the appeal are attached hereto.

William N. Strack, Ross Dean Rynder, Solicitors for Petitioner.

May 21, 1935.

[File endorsement omitted.]

[fol. 198] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed May 24, 1935

To the Honorable Judges of the District Court of the United States for the Western District of Missouri, St. Joseph Division:

Your petitioner, St. Joseph Stock Yards Company, respectfully shows:

That on, to wit, May 15, 1934, your petitioner, St. Joseph Stock Yards Company, filed in this court its petition in equity in this proceeding, for the purpose of suspending, enjoining, setting aside, and annulling a certain order issued by H. A. Wallace, Secretary of Agriculture, entered on the 4th day of May, 1934, in a proceeding before said Secretary, conducted by the Bureau of Animal Industry of the Department of Agriculture of the United States, en-

titled "In Re Secretary of Agriculture v. St. Joseph Stock Yards Company, docket no. 298"; that in said petition it was alleged in substance that said findings, conclusion and order of the Secretary were contrary to law, confiscatory of petitioner's property, and deprived petitioner of its property without due process of law, in violation of the fifth amendment to the Constitution of the United States, and that said findings, conclusion and order were, therefore, [fol. 199] void and of no effect; that in said petition it was prayed that this court issue a subpoena, directed to said defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this court and to answer said bill; that this court direct that due and proper notice of said petition and proceeding issue and be served forthwith, as prescribed in the Act of October 22, 1913 (28 U. S. C. A., secs. 41 (28) and 43 to 48, inclusive); that a court constituted as required by said act of October 22, 1913 (28 U. S. C. A., sec. 47) be convened, and that said court so constituted and convened should hear this petition upon due and legal notice to defendants; that the judge of this court should call to his assistance two other judges, one of whom should be a Circuit Judge, and that upon three days' notice to defendants, this court should enter its order staying and suspending the enforcement, operation, or execution of said order of said Secretary, and each and every part thereof, for sixty days from the date of said order; and that after five days' notice of the time and place of hearing having been given to the defendants, petitioner herein be granted a temporary injunction restraining the said Secretary from enforcement of said order of May 4, 1934; that, upon final hearing of this suit, the court should enter a decree permanently suspending, enjoining, setting aside, and annulling the said order of the Secretary; that petitioner should have and recover of the defendants the proper costs of this suit; and that the petitioner should have such other and further relief in the premises as to equity may appertain and as might be deemed by this court fit and proper.

[fol. 200] That thereupon the Honorable Merrill E. Otis, District Judge, called to his assistance the Honorable Kimbrough Stone, Circuit Judge, and the Honorable Albert L. Reeves, District Judge, in order to constitute a court

in accordance with the statute; that, on June 9, 1934, this cause came on to be heard before the United States District Court composed as aforesaid, and that the court thereupon heard counsel for the parties, and being duly advised in the premises, and petitioner having executed a bond as required by the court, said court ordered, adjudged and decreed that a temporary injunction be granted petitioner against said defendants, their respective agents, servants, and anyone acting by, through or for them, restraining them and each of them from enforcing or attempting to enforce said order promulgated by the Secretary of Agriculture, dated May 4, 1934, in a proceeding entitled "Secretary of Agriculture v. St. Joseph Stock Yards Company, docket no. 298", or from prosecuting petitioner for recovery of penalties or otherwise for failure to comply with the provisions of said order, pending the final hearing and final decision of this court thereon.

That thereafter on, to wit, May 1, 1935, said court announced its memorandum opinion and findings of fact in said proceeding, and that on, to wit, May 1, 1935, said court entered its final decree dissolving said temporary injunction of June 9, 1934, and thereafter extended the effective date of said decree until June 8, 1935.

That said final decree is greatly to the prejudice and injury of your petitioner and is erroneous and inequitable.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of errors and prayer for reversal, filed with the clerk pur- [fol. 201] suant to Rule 9 of the Rules of the United States Supreme Court; and there has been likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained of, your petitioner prays for the allowance of an appeal in said cause to the Supreme Court of the United States agreeably to the statutes and rules of said court in such cases made and provided; and, desiring to supersede the execution of the decree, and to stay the operation of said order of the Secretary of May 4, 1934, pending this appeal and the determination of this appeal in the Supreme Court of the United States, petitioner here

tenders bond in such amount as the court may require for such purpose, and prays that with the allowance of the appeal a supersedeas be issued; and that a proper order touching the security required of the petitioner be made.

Dated May 24th, 1935, at Kansas City, Missouri.

R. E. Culver, William N. Strack, Ross Dean Rynder,
Solicitors for Petitioner.

[File endorsement omitted.]

[fol. 202] In United States District Court

[Title omitted]

Assignment of Errors—Filed May 24, 1935

And now, on this, the 24th day of May, A. D. 1935, comes the petitioner, by its solicitors, R. E. Culver, William N. Strack, and Ross Dean Rynder, and says that the decree entered in the above cause on the 1st day of May, A. D. 1935, is erroneous and unjust to the petitioner.

Application to Reopen

No. 1. Because the court erred in finding that the case should not have been reopened upon petitioner's application of February 2, 1934.

No. 2. Because the court erred in making the following finding:

"A comparison of these figures with those of actual receipts (page 157) for the six years, 1927-1932, inclusive, reveals that the Secretary's figures are very conservative. As to hogs, his figure is only 126,010 above the lowest receipt (in 1932) during the above six year period. In view of the above conservatism of the Secretary, it is by no means clear that such estimates are so far wrong as to be influenced materially by the operation of this Act.

Because of the speculative character as to the occurrence or permanency of the suggested action by the Secretary under the Act and because of the conservative estimate of volume of receipts used by the Secretary, we think this ground insufficient to warrant reopening of the case."

[fol. 203] No. 3. Because the court erred in the following finding:

"(4) As to the estimated effect of these rates if applied to 1933 business, the difference between the amount which is claimed would have been earned thereunder and the amount found by the Secretary to constitute the reasonable net return is too small to be taken as a guide for a rate."

Confiscation

No. 4. Because the court erred in finding that findings of fact made by the Secretary of Agriculture in a proceeding under the Packers and Stockyards Act are made conclusive by statute in confiscation cases.

No. 5. Because the court erred in holding that the findings of fact of the Secretary of Agriculture, if supported by substantial evidence, are conclusive upon the reviewing court in cases where the constitutional issue of confiscation is involved.

Transit House

No. 6. Because the court erred in its finding reading as follows:

"While the yards are some distance from the hotel section of the city proper, there is no sufficient showing of any reason why other hotels and lodging houses could not be used by those having business with the stock yards."

No. 7. Because the court erred in its finding reading as follows:

"It would have to be shown very clearly that the business of the yards would be materially affected by the absence of a nearby hotel before it could be said that the maintenance of such was so related to the yards business as to make it proper to be included in the rate for yard services. There is no such showing here and the exclusion thereof by the Secretary is sustained."

[fol. 204] No. 8. Because the court erred in failing to find that the maintenance of the Transit House is a question within the managerial discretion of petitioner's officers and directors.

No. 9. Because the court erred in failing to find that the Transit House was determined by the Secretary, in his first decision herein of July 20, 1931, to be used and useful in connection with the operation of petitioner's stock yards.

No. 10. Because the court erred in failing to find that the undisputed testimony on behalf of the Government and of petitioner shows that the present use of the Transit House is the same as at the time of the first hearing in this proceeding in 1929 and at the time of the Secretary's first decision herein of July 20, 1931.

No. 11. Because the court erred in failing to find that the Transit House is a proper convenience for truckers and shippers of live stock to petitioner's yards.

No. 12. Because the court erred in failing to find that the action of the Secretary, in excluding from petitioner's fair value the value of said Transit House, was arbitrary, and contrary to the evidence of record.

No. 13. Because the court erred in failing to weigh the evidence relating to the use and operation of the Transit House by petitioner and to give effect to the weight of such evidence.

No. 14. Because the court erred in failing to state and apply its own independent conclusions upon the facts of record bearing upon the question whether said Transit House is used and useful in connection with the operation of petitioner's stock yards.

[fol. 205] (2) Value of Land

No. 15. Because the court erred in its finding as follows:

"While petitioner contends that we should determine the issue *de novo,* we do not understand that to be our duty. In fact, we think we have no right or power so to act. The Congress has committed this issue of fact to the Secretary and our only duty is to keep his action within reasonable bounds—that is, to prevent it being arbitrary. This means that petitioner has the burden of showing that such action is clearly and convincingly wrong. Petitioner has failed to convince us to that effect."

No. 16. Because the court erred in failing to find that the value of Zone A of petitioner's property, as fixed by

the Secretary, was less than its real and true value by at least $275,164, and to that extent constituted confiscation of petitioner's property.

(4) Value of Structures

No. 17. Because the court erred in its finding as follows:

"Certainly this was a matter of judgment and it is not clearly shown that the results reached by the Secretary are erroneous."

No. 18. Because the court erred in failing to find that there was no legal evidence in the record before the Secretary tending to support the percentage of 76.04 as the average percentage condition of the structures used by petitioner in its stockyard services.

No. 19. Because the court erred in failing to find that such illegal use of said percentage condition of 76.04 per cent amounted to approximately $341,799 and to that extent constituted confiscation of petitioner's property.

[fol. 206] Exclusion of Going Concern Value

No. 20. Because the court erred in its finding as follows:

"The only evidence as to this element of value was by witness Howson (for petitioner)."

No. 21. Because the court erred in its finding as follows:

"In the end, this entire evidence of Howson is nothing more than an expert opinion resting upon rather shadowy bases of facts."

No. 22. Because the court erred in its finding as follows:

"Moreover, at least some of the elements considered by Howson seem to have been included in the valuation by the Secretary (see finding 136 which included such items as interest during construction ($125,106) and taxes during construction ($18,257)—possibly also, insurance during construction ($10,618, $46, and $485)."

No. 23. Because the court erred in its finding as follows:

"Even if there were grave doubt as to whether the Secretary had sufficiently included 'going concern' value, he can-

not be held clearly wrong in not accepting the above evidence as a basis for allowing such value and there was no other evidence upon which he could have acted."

No. 24. Because the court erred in failing to find that, because the Secretary allowed petitioner nothing for the item of going concern value, the total value fixed for petitioner's property was at least $273,300 less than its real and true value and to that extent constituted confiscation of petitioner's property.

(7) Depreciation Reserve.

No. 25. Because the court erred in its finding reading as follows:

[fol. 207] "That of Government witness Bachman shows great care to discover the elusive fact of what and where there was depreciation not taken care of by repairs and he pursued his investigation to great detail. Also, he thoroughly examined and analyzed the showing of the books of the company as to these items. We think the analysis of his and other testimony on this point in the Government's brief is very convincing."

No. 26. Because the court erred in its finding reading as follows:

"The findings of the Secretary show earnest study and consideration of the evidence and a very apparent attitude of fairness. We think the Secretary is fully sustained as to this matter. We are certain there is no clear showing he was not right."

No. 27. Because the court erred in failing to find, in connection with depreciation reserve, that the cost of reproduction new of petitioner's used and useful structures as of August 1, 1932, was $2,637,186.

No. 28. Because the court erred in failing to find that the average life of all of the structures used by petitioner for stockyards purposes was shown by the evidence of the Government engineer to be 24.8 years.

No. 29. Because the court erred in failing to find that, if the average life of petitioner's used and useful stock-

yards structures was 24.8 years, the annual depreciation therein was approximately $113,492.

No. 30. Because the court erred in failing to find that the annual depreciation allowance made by the Secretary of $41,500 for a depreciation reserve would require 63 years to equal the cost of reproduction new.

No. 31. Because the court erred in failing to find that the annual amount allowed by the Secretary for a depreciation reserve was less by $67,295 per year than the amount indicated as proper by Government exhibit 114.

[fol. 208] No. 32. Because the court erred in failing to find that the evidence justified the conclusion that the average annual depreciation of petitioner's stockyards property was at a rate of 3.77 per cent per annum, requiring an annual allowance of approximately $100,000.

No. 33. Because the court erred in failing to find that the allowance for an annual depreciation reserve must be based upon present value.

No. 34. Because the court erred in failing to find that the allowance for an annual depreciation reserve must be based upon a sum of money amounting to approximately $2,637,186 as of the time of the hearing.

No. 35. Because the court erred in failing to find that the amount allowed for an annual depreciation reserve by the Secretary, namely, $41,500, would have to earn a net return, after taxes, of 7 per cent per annum continuously, such interest to be compounded annually, in order to equal the cost of reproduction new of petitioner's stockyards structures during the life estimated by the Government engineer of 24.8 years.

No. 36. Because the court erred in failing to find that, even if the annual allowance for a depreciation reserve were to be invested and reinvested at 4 per cent simple interest, it would be necessary to increase the annual allowance for a depreciation reserve from $41,500 to $71,275 per year, or $29,775 in excess of the amount allowed by the Secretary.

No. 37. Because the court erred in failing to find that, in determining the amount of said annual allowance for a depreciation reserve, namely, $41,500, the Secretary was

[fol. 209] in fact fixing an allowance for a depreciation reserve in connection with a depreciated rate base.

No. 38. Because the court erred in failing to find that the Secretary was in fact, by means of the inadequate amount allowed for a depreciation reserve, fixing the annual allowance for a depreciation reserve upon a sinking fund compound interest method.

No. 39. Because the court erred in failing to find that a compound interest sinking fund method is improper except with an undepreciated rate base.

No. 40. Because the court erred in failing to find that, in using a depreciated rate base, it was improper for the Secretary to limit the amount to be allowed for a depreciation reserve to a sum which would have to be invested upon a compound interest sinking fund method in order to produce the value of the property within the period of its estimated life.

No. 41. Because the court erred in failing to find that the Secretary may not require petitioner to invest money for the purpose of earning a return on such investment to provide an adequate depreciation reserve.

No. 42. Because the court erred in failing to find that it would be impracticable to use a depreciation reserve in additions and improvements to petitioner's stockyards property or otherwise in the operation of petitioner's stockyards business.

No. 43. Because the court erred in failing to find that the Secretary is without authority to prescribe the method to be followed by petitioner in establishing and maintaining a depreciation reserve.

[fol. 210] No. 44. Because the court erred in failing to find that the experience of the company shows that the amounts heretofore set aside annually as specific depreciation reserves have not been excessive, but, on the other hand, have been inadequate.

No. 45. Because the court erred in failing to find that the evidence on behalf of petitioner established the necessity for an annual depreciation allowance of approximately $100,000.

No. 46. Because the court erred in failing to find that, if said annual allowance of $41,500 could be invested at compound interest on a 7 per cent basis or otherwise, the taxes upon the principal sums and the income therefrom would be so great as to render it impossible to accumulate the required amount during the average life of petitioner's stockyards property.

No. 47. Because the court erred in failing to find that the allowance by the Secretary of $41,500 annually for a depreciation reserve unlawfully deprives petitioner of approximately $58,500 of necessary operating income per year.

No. 48. Because the court erred in failing to find that, except for the inadequate amount allowed by the Secretary as an annual contribution to a depreciation reserve, no reductions could have been made in petitioner's stockyards rates and charges.

No. 49. Because the court erred in failing to state and apply its own independent conclusions upon the facts of record bearing upon the question of an adequate depreciation reserve.

[fol. 211] No. 50. Because the court erred in failing to find that the amount prescribed by the Secretary of $41,500, as an annual allowance for a depreciation reserve, results in confiscation of petitioner's stockyards property.

Rate Base Summary.

No. 51. Because the court erred in its finding that the value of petitioner's used and useful property was $2,753,000.

No. 52. Because the court erred in failing to find that the total value fixed by the Secretary for the used and useful property of petitioner was at least $1,010,406 less than its real and true value and to that extent constituted confiscation of petitioner's property.

Test Period.

No. 53. Because the court erred in finding that the rates and charges prescribed by the Secretary and the estimated receipts for the future were warranted by the six-year (1927-1932) study of petitioner's business.

No. 54. Because the court erred in failing to find that petitioner's net operating income for rate making purposes for 1932, the last year prior to the hearing, was less than a fair return.

No. 55. Because the court erred in failing to find that petitioner's net operating revenue for rate making purposes for the year 1932, the last year prior to the hearing, did not exceed $190,656.21.

No. 56. Because the court erred in failing to find that the fair return as determined by the Secretary, $192,010, was greater than the amount actually earned by petitioner in 1932.

[fol. 212] No. 57. Because the court erred in failing to find that during the six-year test period (1927-1932, inclusive) there was a constant diminution in the receipts of live stock at petitioner's yards and in its income from stockyard services.

No. 58. Because the court erred in failing to find, as had been previously judicially determined, that petitioner's rates and charges did not result in unreasonable income during 1930 and the first six months of 1931.

No. 59. Because the court erred in failing to find that during said test period there had been a constant diminution in the amount of feed sold by petitioner as a part of its stockyard services, so that petitioner's feed sales in 1932 were approximately $94,248 less than in 1928.

No. 60. Because the court erred in failing to find that the reduction of petitioner's rates by the Secretary was based upon an assumption by the Secretary that petitioner's receipts would increase over its receipts in 1932, notwithstanding the fact, of which the court should have taken judicial notice, that the Secretary had, prior to the issuance of his order, taken steps to definitely reduce the supply of live stock to be marketed at all markets, including petitioner's stock yards.

No. 61. Because the court erred in failing to find that the rates and charges prescribed by the Secretary would have reduced petitioner's net operating income for rate making purposes in 1932 by approximately $81,464.55, although

petitioner did not during said year earn the fair return of $192,010 determined by the Secretary.

[fol. 213] No. 62. Because the court erred in failing to find that the estimated receipts of live stock at petitioner's stock yards, upon which the Secretary based his rates and charges for the future, exceeded substantially the live stock receipts of petitioner for the year 1932.

No. 63. Because the court erred in failing to find that the revenue from miscellaneous charges estimated by the Secretary exceeded by substantial amounts the revenue received by petitioner in 1932.

No. 64. Because the court erred in failing to find that, on account of said errors in estimates made by the Secretary, the gross revenue estimated by the Secretary, as per paragraph 208 of the Secretary's decision, exceeded by approximately $110,000 the revenue which would actually have accrued in 1932 if the rates prescribed by the Secretary had been in effect.

No. 65. Because the court erred in failing to find that the findings of the Secretary respecting the volume of receipts used as a factor in constructing the prescribed rates and charges were contrary to the evidence and therefore void.

No. 66. Because the court erred in failing to find that petitioner's rates and charges in effect at the time of the hearing did not produce excessive or unreasonable income for the year 1932.

No. 67. Because the court erred in failing to find that petitioner's rates and charges did not produce excessive or unreasonable income in any one year or for the entire period of years 1927-1932, inclusive.

[fol. 214] No. 68. Because the court erred in failing to find that the evidence offered by the Secretary conclusively established the fact that petitioner's rates and charges and its income resulting therefrom were not unreasonable in 1932.

No. 69. Because the court erred in failing to find that the Secretary's findings and order as to estimated receipts of live stock, feed sales, total gross revenue, and net operating income were wholly hypothetical and speculative.

No. 70. Because the court erred in failing to find that the Secretary arbitrarily included in his estimate of petitioner's operating income $4,000 as profit from feed sold to and consumed by Anchor Serum Company on land excluded by the Secretary from the rate base, and to that extent constituted confiscation of petitioner's property.

No. 71. Because the court erred in failing to find that the Secretary was without authority to reduce petitioner's rates and charges for stockyard services because said charges were proved by the Secretary not to have been unreasonable at the time of the hearing.

No. 72. Because the court erred in failing to find that the specific rates and charges prescribed by the Secretary are not supported by any evidence of record in this case and therefore are arbitrary and void.

No. 73. Because the court erred in failing to find that the specific reductions in the rates and charges prescribed by the Secretary are arbitrary, based upon no evidence of record, and therefore void.

[fol. 215] Operating Expenses

No. 74. Because the court erred in finding, with respect to the elimination by the Secretary of certain of petitioner's operating expenses, that the reason given by the Secretary for each of these eliminations is satisfactory and supported by the evidence.

No. 75. Because the court erred in failing to find that the evidence of record does not justify the elimination from operating expenses made by the Secretary.

No. 76. Because the court erred in failing to find that the operating expenses of petitioner should have been increased so as to permit at least $100,000 per year for a depreciation reserve.

No. 77. Because the court erred in failing to find that the Secretary had allowed in operating expenses an inadequate amount for taxes and repairs.

Feed Lot Yardage Charge

No. 78. Because the court erred in its finding reading as follows:

"Petitioner's brief argues the above reasons quite ably but it seems to us that this argument is completely met by that in the brief of the Secretary (pp. 160–175). The evidence supports the position so stated by the Secretary."

No. 79. Because the court erred in failing to find that the findings of the Secretary with respect to feed lot yardage were arbitrary and void because not based upon any evidence of record.

No. 80. Because the court erred in failing to find that the income estimated by the Secretary to be received by petitioner from feed lot yardage charges was speculative, [fol. 216] hypothetical, based upon no evidence, and therefore void.

No. 81. Because the court erred in failing to find that, inasmuch as the Secretary's order with respect to feed lot yardage charges is based upon a finding of discrimination, the Secretary's order could only require removal of the discrimination, leaving to petitioner alternative methods of removing such discrimination.

No. 82. Because the court erred in failing to find that petitioner's feed lot yardage revenue, as estimated by the Secretary under the rates and charges prescribed by the Secretary, exceeded by approximately $14,000 the amount which would have been received by petitioner had such rates and charges been in effect in the year 1932 and been applied to the live stock which actually received feed lot yardage service.

No. 83. Because the court erred in failing to find that the estimate of the Secretary as to the amount of revenue to be received by petitioner from yardage upon shipments sold or reweighed for purpose of sale was without any support in the evidence and was therefore arbitrary and void.

No. 84. Because the court erred in failing to find that petitioner was already applying a yardage charge upon shipments resold or reweighed for purpose of sale substantially as great as that prescribed in the order of the Secretary.

No. 85. Because the court erred in failing to find that, in the estimate made by the Secretary, the Secretary predicted that petitioner would receive a gross income of $25,775 per year from resale and reweigh yardage charges.

[fol. 217] No. 86. Because the court erred in failing to find that the resale and reweigh yardage charges applied to petitioner's business in 1932 would not have exceeded $4,972.

No. 87. Because the court erred in failing to find that the Secretary erroneously estimated petitioner's income for future years by including therein estimated income from resale and reweigh yardage charges upon a much greater number of head of live stock than are subject to those charges at petitioner's stock yards.

Summary

No. 88. Because the court erred in failing to find that petitioner's net operating income for rate making purposes in 1932, based upon the revision in its operating expenses made by the Secretary, did not exceed $190,656.21.

No. 89. Because the court erred in failing to find that petitioner's net operating income for 1932 was less than the fair return as determined by the Secretary of Agriculture of $192,010.

No. 90. Because the court erred in failing to find that petitioner's net operating income for rate making purposes was not excessive in 1930 and 1931 and would have been much less than reasonable if the rates prescribed by the Secretary had been in effect.

No. 91. Because the court erred in failing to find that during the entire period 1927–1932, inclusive, and during each of said years, the net operating income earned by petitioner would have been much less than reasonable and would have been confiscatory if the rates prescribed by the Secretary had been in effect.

[fol. 218] No. 92. Because the court erred in failing to find that during the year immediately prior to the hearing (1932) the rates prescribed by the Secretary would have afforded petitioner a net operating income of only 3.9 per cent on the fair value of petitioner's property as determined by the Secretary.

No. 93. Because the court erred in failing to find that the decision and order of the Secretary would result in depriving petitioner of its property without due process of law in violation of the fifth amendment to the Constitution of the United States and in violation of the law of the land.

No. 94. Because the court erred in failing to find the facts, and to exercise its independent judgment upon the facts and the law, as they relate to (1) the application to reopen; (2) the Transit House; (3) value of land; (4) value of structures; (5) going concern value; (6) annual allowance for a depreciation reserve; (7) rate base summary; (8) test period; (9) receipts of live stock and net operating income for the year 1932 and for the period 1927–1932; (10) operating expenses; and (11) feed lot yardage charges.

No. 95. Because the court erred in entering its final decree herein of May 1, 1935, in which the court ordered, adjudged and decreed that the temporary injunction hereinbefore issued be dissolved; that petitioner's bill be dismissed; and that the costs of this case be assessed against petitioner.

[fol. 219] Conclusion

Wherefore petitioner prays that the said decree entered herein on May 1, 1935, be reversed and that said District Court of the United States for the Western District of Missouri, St. Joseph Division, be directed to enter a decree granting the petition of petitioner in said court, and that said order of the Secretary of Agriculture of May 4, 1934, be declared void and perpetually set aside, suspended, and annulled, and that your petitioner be granted such other and further relief as may be appropriate.

R. E. Culver, William N. Strack, Ross Dean Rynder,
Solicitors for Petitioner.

[File endorsement omitted.]

[fol. 220] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed May 24, 1935

The petition of St. Joseph Stock Yards Company, the petitioner in the above entitled cause, for an appeal in the

above entitled cause to the Supreme Court of the United States from the decree of the District Court of the United States for the Western District of Missouri, St. Joseph Division, having been filed herein, accompanied by an assignment of errors and statement as to jurisdiction, all as provided by rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this court and the record in this cause having been considered;

It is hereby ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Western District of Missouri, St. Joseph Division, entered in this cause on the 1st day of May, 1935, and suspended until thirty (30) days from May 9, 1935; and that the Clerk of the said District Court of the United States for the Western District of Missouri, St. Joseph [fol. 221] Division, shall, within thirty (30) days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein, all in accordance with rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that said appellant shall give a good and sufficient cost bond in the sum of Five Hundred Dollars ($500.00), conditioned as required by law.

Done by the Court this 24th day of May, 1935.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 222] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING SUPERSEDEAS—Filed May 24, 1935

This cause coming on to be heard upon the petition of the St. Joseph Stock Yards Company herein for allowance of an appeal to the Supreme Court of the United States

from the final decree entered herein by this court on May 1, 1935, and upon the petition of said St. Joseph Stock Yards Company to supersede the execution of the decree and to stay the order of the Secretary of Agriculture of May 4, 1934 in the proceeding known before said Secretary as "docket no. 298, In re Secretary of Agriculture v. St. Joseph Stock Yards Company," pending appeal to the Supreme Court of the United States and the determination of said appeal in said court, it is

Ordered that the enforcement, operation, and execution of said order of the Secretary of Agriculture, entered on May 4, 1934, and of the final decree of this court herein, entered on May 1, 1935, be and they are hereby stayed during the pendency and until the determination of said appeal by the Supreme Court of the United States, upon condition that appellant (petitioner) file herein a bond in the sum of [fol. 223] Two Hundred Thousand Dollars ($200,000), the obligee in said bond to be the Secretary of Agriculture for the use and benefit of such persons, who, if the order of the Secretary of Agriculture, dated May 4, 1934, be sustained by the decision of the Supreme Court of the United States herein upon appeal, shall, as a result of the temporary injunction heretofore entered in this cause, and of this stay pending appeal, have paid to the petitioner for stockyard services, including charges for feed and feeding at petitioner's stock yards, rates and charges in excess of those fixed and found reasonable in the aforesaid order of the Secretary of Agriculture.

It is further ordered that the aforesaid bond shall be conditioned that appellant (petitioner) will prosecute its appeal with effect and shall pay or cause to be paid all net amounts which may be due from it to the Secretary of Agriculture or said other persons, or any of them, during the period July 15, 1934 until the decision of the Supreme Court of the United States on the appeal taken herein under the order entered by said Secretary of Agriculture on May 4, 1934 and said final decree of this court entered on May 1, 1935.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

May 24, 1935.

[File endorsement omitted.]

[fols. 224 & 225] Cost bond on appeal for $500.00, approved and filed May 24, 1935, omitted in printing.

[fols. 226-233] Supersedeas bond on appeal for $200,000, approved and filed May 24, 1935, omitted in printing.

[fols. 234–237] Citation, in usual form, omitted in printing.

[fols. 238-244] IN UNITED STATES DISTRICT COURT

LETTER—Filed July 1, 1935

United States District Court, Western District of Missouri, Kansas City

Merrill E. Otis, District Judge

June 20, 1935.

Mr. Ross Dean Rynder, 4015 Packers Avenue, Chicago, Illinois.

DEAR MR. RYNDER:

I return herewith the petition for supplemental findings of fact and conclusions of law in the St. Joseph Stock Yards Company case, together with the form of order which you left with me. The Court does not believe that the order asked by you should be made.

Very truly yours, (Sgd.) Merrill E. Otis.

[File endorsement omitted.]

[fol. 245] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF NARRATIVE STATEMENT OF EVIDENCE, ETC.—Filed Sept. 26, 1935

To United States of America and Secretary of Agriculture, defendants herein:

Please take notice that petitioner (appellant in the above cause) has lodged in the Clerk's office of the United States

District Court for the Western District of Missouri, St. Joseph Division, at St. Joseph, Mo., for the examination of the parties hereto, the narrative statement of evidence to be included in the transcript of record on appeal to the Supreme Court of the United States from the final decree entered in the above proceeding on May 1, 1935, said narrative statement of evidence being in accordance with a stipulation of counsel for petitioner (appellant) and counsel for the United States of America and the Secretary of Agriculture, dated September 11, 1935, and a stipulation supplemental thereto, dated September 18, 1935.

Further please take notice that on the 26th day of September, 1935, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, at the court room of said United States District Court in the Federal Building in the City of Kansas City, Mo., petitioner (appellant) will move the court to enter an order (copy of which is hereto attached) approving said narrative statement of evidence, and provid-
[fol. 246] ing for the certification to the Supreme Court of the United States of certain of the original exhibits filed upon the trial of said cause in said District Court, said exhibits to be certified and forwarded by the Clerk of the District Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom.

R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner.

Service of the foregoing notice and order therein referred to and receipt of a copy thereof are admitted by the undersigned this 18th day of September, 1935, who assent to the entry of said order hereto attached.

Hugh B. Cox, Counsel for the United States of America and Secretary of Agriculture.

[File endorsement omitted.]

[fol. 247] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING NARRATIVE STATEMENT OF EVIDENCE

This cause coming on for hearing on the motion of petitioner (appellant) for an order approving the narrative

statement of evidence filed herein and certifying original exhibits to the Supreme Court of the United States, and the court being advised in the premises, it is

Ordered:

1. That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the evidence which is essential to the decision of the questions presented by the appeal, be and it is hereby approved.

2. That the Clerk of this court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said court all of the condensed narrative statement of evidence and the exhibits specified in the stipulation of counsel herein; that said exhibits shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but [fol. 248] separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

—— ——, United States Circuit Judge. —— ——, United States District Judge. —— ——, United States District Judge.

September —, 1935.

[fol. 249] [File endorsement omitted]

[fol. 250] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION CONCERNING CONDENSED NARRATIVE STATEMENT OF RECORD AND ORIGINAL EXHIBITS TO BE TRANSMITTED TO THE UNITED STATES SUPREME COURT

On the hearing of petitioner's application for a permanent injunction, petitioner offered in evidence a condensed narrative of the transcript of evidence and proceedings had before the Secretary of Agriculture, at the hearing held at

St. Joseph, Mo., December 2 to 17, 1929, in a proceeding entitled "Before the Secretary of Agriculture, Bureau of Animal Industry, in re Secretary of Agriculture vs. St. Joseph Stock Yards Company, respondent, docket No. 298"; said condensed narrative of the transcript of the evidence of said hearing having been stipulated by counsel for petitioner and defendants to be a fair and satisfactory abstract of the evidence introduced at the above entitled hearing. At said hearing on the application for a permanent injunction, petitioner also introduced in evidence a fully copy of the transcript of the record of the evidence and proceedings before the Secretary of Agriculture at the further hearing in said proceeding, entitled "Before the Secretary of Agriculture, Bureau of Animal Industry, in re Secretary of Agriculture vs. St. Joseph Stock Yards Company, respond- [fol. 251] ent, docket No. 298"; said hearing being the second hearing in said proceeding, held at St. Joseph, Mo., January 10 to February 16, 1933. At said hearing on the application for a permanent injunction, petitioner also offered in evidence a condensed narrative of the transcript of the evidence and proceedings before the Secretary of Agriculture at said second hearing, January 10 to February 16, 1933, consisting of two volumes which were stipulated by counsel for the Secretary of Agriculture and for petitioner to be a fair and satisfactory abstract of the evidence introduced in the rehearing of the above entitled proceeding on January 10 to February 16, 1933. The condensed narrative statement, hereinabove referred to, of the evidence upon said first hearing, December 2 to 17, 1929, is entitled "Abstract of Record. Hearing held at St. Joseph, Mo., December 2 to 17, 1929" and consists of 548 printed pages. The condensed narrative statement, hereinabove referred to, of the further hearing in this proceeding before the Secretary of Agriculture is entitled "Abstract of Record. Rehearing held at St. Joseph, Mo., January 10 to February 16, 1933" and consists of one volume, containing the testimony on behalf of the Government, and a second volume, containing the testimony on behalf of the petitioner, consisting of approximately 1,101 pages.

It is now hereby stipulated, by and between counsel for petitioner and counsel for the United States and the Department of Agriculture, that said three printed volumes, containing a condensed narrative of the transcript of the

evidence and proceedings in said hearings, shall be substituted for the original transcript of the oral testimony offered in evidence before the United States District Court for the Western District of Missouri, St. Joseph Division, and shall be incorporated in the record on appeal and shall [fol. 252] have the same force and effect upon the appeal as the original testimony.

It is further stipulated that, in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk of the United States District Court for the Western District of Missouri, St. Joseph Division, shall certify to the Supreme Court of the United States, for printing as the record on appeal, the following pages of said printed volumes of condensed narrative of the transcript:

Abstract of Record. Hearing at St. Joseph, Mo., December 2 to 17, 1929

Pages 1 and 2 and the first paragraph on page 3, concluding with the words "were present by counsel."

That portion of page 13 commencing with the caption "Land Appraisal by Government" and continuing through page 14 to and including the words "the report," in the third line from the bottom of the page.

That portion of page 16 commencing with the words "Government Exhibit 4—L" in the eighth line thereof, and continuing through the third paragraph on page 24 ending with the words "in this proceeding (T. 47)."

Pages 25-32, inclusive, and to the end of the sixth line on page 33.

Page 37, commencing with the caption "Redirect Examination", to and including page 50 to the end of the first paragraph thereof, ending with the words "Mr. Henrici (T, 106)."

Page 58, commencing with the last paragraph thereon carrying the caption "Transit House", and continuing through page 59, including the fourth line from the bottom ending with the words "many years ago."

Page 67, commencing with "Mr. F. W. Mollin, a witness called by the Government," and continuing through page 68 to the end of the first paragraph thereon, concluding with the words "at those points (T. 145)."

Page 73, commencing with the caption "Stock Yard Hotels" and continuing through the first paragraph on page 74 concluding with the words "around midnight."

[fol. 253] Page 104, commencing with the caption "Reproduction New and Less Depreciation" and continuing through the last line of the first paragraph on page 107 ending with the words "time being (T. 235)."

Page 107, that portion at the bottom of the page commencing with the caption "Condition Per Cent" and continuing through the first paragraph on page 109 ending with the words "condition per cent (T. 237)."

Page 111, that portion of the first paragraph commencing with the caption "Audit of Respondent's Records" and ending with the words "position is recognized."

Page 111, that portion at the bottom of the page commencing with the words "H. E. Bufkin, a witness called by the Government," and continuing through page 127 to the end of the first paragraph thereon, ending with the words "since that time (T. 278)."

Page 131, that portion of said page commencing with the caption "Probable Receipts at River Markets; Effect of Divergent Rates at Those Markets; Advisability of Stockyards Hotels" and continuing through page 137 to the end of the first paragraph thereon, ending with the words "resell on the market (T. 494)."

Page 138, commencing with the caption "Evidence offered by Respondent" and continuing to the end of page 139.

Page 147, that portion commencing with the caption "Transit House" and continuing through page 149 to the end of the first paragraph thereof, ending with the words "upon other elements (T. 312)."

Page 153, commencing with the caption "Land—Respondent's Appraisal" and continuing through to the end of page 176.

Page 179, commencing with the caption "Cross-Examination" and continuing through to the end of the first paragraph on page 186, ending with the words "ordinary business transaction (T. 377)."

Page 186, commencing in the second paragraph with the words "I did not state that zones A and B are all of the same basic character as to value" and continuing through to the end of the first paragraph on page 188, ending with the words "15¢ per square foot."

Page 189, commencing with the second paragraph thereon and continuing through to the end of the second paragraph on page 194, ending with the words "as above quoted."

Page 194, commencing with the words "Frank M. Atkinson, being first duly sworn, testified in substance as follows:" and continuing through the end of the 19th line on page 200, ending with the words "and terrible."

[fol. 254] Page 200, commencing with the last paragraph on said page and continuing through to the end of the third paragraph on page 201, ending with the words "we do not."

Page 224, commencing with the caption "Used and Useful Property" and ending with the next to the last paragraph which concludes with the words "outside facilities."

Page 237, that portion commencing with the words "Zone 1, Transit House" and continuing through to the end of the first paragraph on page 239, ending with the words "taken care of."

Page 276, commencing with the caption "Transit House" and continuing through the first paragraph on page 278, ending with the words "Transit House."

Page 283, commencing with the caption "Going Concern Value" and continuing through to the end of the third paragraph on page 358, ending with the words "science of mathematics."

Page 359, commencing with the caption "Depreciation Reserve" and continuing through to the end of the second paragraph on page 399, ending with the words "that used it (T. 798)."

Page 400, commencing with the caption "Redirect Examination" and continuing through the second paragraph on page 403, ending with the words "in the future."

Page 467, commencing with the caption "Income for Rate Making Purposes" and continuing through to the end of the third paragraph on page 473, concluding with the words "five-year average (T. 1096)"

Page 493, commencing with the caption "Used and Useful Property" and continuing through to the end of the second paragraph on page 498, concluding with the words "see it abolished."

Page 499, the three lines reading as follows: "S. F. Kosters, upon being recalled by Respondent, testified in substance as follows: Direct Examination."

Page 502, that portion commencing with the caption "Used and Useful Property" and continuing through to the end of the second line on page 503, concluding with the words "enforced (T. 1161)."

Page 507, that portion commencing with the caption "Going Concern Value" and continuing through to the end of the first paragraph on page 509, concluding with the words "period in 1928."

Page 515, commencing with the words "Cross-Examination" and continuing through to the end of the second paragraph on page 519, concluding with the words "near the stockyards."

[fol. 255] Page 529, commencing with the words "Mr. Hermann C. Henrici" and ending with the words "Direct Examination."

Page 530, commencing with the caption "Going Concern Value" and continuing through page 532 to and including the caption "Cross-Examination."

Page 533, through the first paragraph on page 537, ending with the words "pen areas and paving (T. 1219)."

Page 538, commencing with the caption "Going Concern Value" and continuing through to the end of the first four lines on page 540, ending with the words "into them."

Page 542, commencing with the caption "Surrebuttal Testimony of Respondent" and continuing through to the end of page 548.

Abstract of Record. Hearing at St. Joseph, Mo., January 10 to February 16, 1933, Volume 1.

Page 1, commencing with the words "The following is a copy" and continuing through the numbered paragraphs on page 9, ending with the words "privilege of the yards."

Page 12, commencing with the caption "Used and Useful Property" and continuing to the end of the second paragraph on page 14, concluding with the words "operating units, etc."

Page 28, commencing with the caption "Feedlots" and continuing through and including the first paragraph on page 30, ending with the words "be operated (T. 86)."

Page 43, commencing with the caption "Feedlots" through and including the first paragraph on page 45, ending with the words "by respondent (T. 126)."

Page 48, commencing with the caption "Feedlots" and continuing to the end of the first paragraph on page 49, concluding with the words "other feedlots (T. 136)."

Page 50, commencing with the caption "Feedlots" and continuing through to the end of the first paragraph on page 51, concluding with the words "stockyard service (T. 146)."

Page 53, commencing with the caption "Feedlots" and continuing through to the end of the first paragraph on page 54, ending with the words "held for shipment (T. 152)."

[fol. 256] Page 54, commencing with the caption "Transit House" and continuing through to the end of the first paragraph on page 55, concluding with the words "hotel proprietor (T. 155)."

Page 57, commencing with the second paragraph beginning with the words "The witness" and continuing through to the end of the third paragraph, concluding with the words "expansion land (T. 162)."

Page 58, commencing with the caption "Cross-Examination" immediately preceding the last paragraph on the page, through the first paragraph on page 61, ending with the words "inclusive (T. 175)."

Page 62, commencing with the caption "Traders and Speculators" and continuing through to the end of the first paragraph on page 63, ending with the words "it to be (T. 182)."

Page 100, commencing with the caption "Anchor Serum Company" and continuing through the eighth line from the bottom, including the words "former decision (T. 303)."

Page 123, commencing with the caption "Feedlots" and continuing through the second paragraph on page 131, concluding with the words "Mr. Black told me (T. 390)."

Page 133, commencing with the caption "Feedlots" and continuing to the end of said page.

Page 136, commencing with the caption "Transit House" and continuing through the second paragraph on page 137, ending with the words "collected (T. 405)."

Page 139, commencing with the caption "Re-cross Examination" to the end of said paragraph, concluding with the words "matter of practice (T. 413)."

Page 142, commencing with the words "Mr. Herman C. Henrici" and ending with the caption "Direct Examination."

Page 144, commencing with the caption "Cost of Reproduction Less Depreciation" and continuing through page 156 to the end of the first paragraph, concluding with the words "five years ago (T. 465)."

Page 164, commencing with the caption "Depreciation Reserve" and continuing through the caption "Cross-Examination" on page 170.

Page 173, commencing with the caption "Unit Prices" and continuing to the end of the first paragraph on page 178, ending with the words "this same method."

[fol. 257] Page 179, commencing with the caption "Depreciation Reserve" and continuing to the end of the first paragraph on page 180, concluding with the words "August 1, 1932."

Page 181, commencing with the words "I stated that" in the sixth line from the bottom of the page, and continuing through to the end of the second paragraph on page 183, concluding with the words "my 1929 appraisal."

Page 183, commencing with the caption "Audit Prepared by Government Accountants" and continuing through to the end of the first paragraph on page 189, concluding with the words "data which I had."

Page 192, commencing with the caption "Income for Rate-making Purposes" through to the end of the first paragraph on page 193, ending with the words "was not paid."

Page 195, commencing with the caption "Taxes" and continuing through to the end of the page.

Page 197, commencing with the caption "Repairs" and continuing through the caption "Cross-Examination" on page 215.

Page 217, commencing with the caption "Feedlots" and continuing through to the end of the second paragraph on page 218, concluding with the words " 'Feeding Facilities Yardage' (T. 636)."

Page 220, commencing with the caption "Feedlots" and continuing through the single paragraph thereunder, ending with the words "shown as rental."

Page 224, commencing with the caption "Allocation of Maintenance, Repairs and Other Expenses" and continuing through to the end of page 226.

Page 235, commencing with the words "H. E. Bufkin, a witness previously called by the Government" and continuing through the caption "Cross-Examination" on page 237.

Page 245, commencing with the caption "Depreciation Reserve" and continuing through to the end of the first paragraph on page 252, concluding with the words "to do so (T. 736)."

Page 313, all of said page and continuing through to the end of page 334.

Page 337, all of said page and continuing through to the end of the second line on page 437 reading as follows: "account alone (T. 1307)."

[fol. 258] Page 439, commencing with the caption "Traders and Speculators" and continuing through to the end of the first paragraph at the top of page 442, concluding with the words "as follows:"

Page 444, commencing with the caption "Depreciation Reserve" and continuing through to the end of the table on page 450.

Page 451, commencing with the caption "Depreciation Reserve" and continuing through to the end of the first paragraph on page 453, ending with the words "those securities (T. 1340)."

Abstract of Record. Hearing at St. Joseph, Mo., January 10 to February 16, 1933, Volume 2.

Page 455 to the end of the first paragraph on page 458, concluding with the words "Columbia Utilities Commission."

Page 461, commencing with the caption "Depreciation" and continuing to the end of page 466.

Page 478, commencing with the caption "Land Values" and continuing to the end of the first paragraph on page 498, concluding with the words "mind immediately (T. 1457)."

Page 525, commencing with the caption "Depreciation" and continuing through to the end of the first paragraph on page 538, concluding with the words "the approach (T. 1556)."

Page 539, commencing with the caption "Land Values" and continuing through the caption "Redirect Examination" on page 550.

Page 552, commencing with the caption "Depreciation" and continuing to the end of the second paragraph on page 557, concluding with the words "a few hours."

Page 562, commencing with the caption "Cost of Reproduction Less Depreciation" and continuing to the end of page 629.

Page 633 and continuing to the end of page 749.

Page 753 and continuing to the end of line 27 on page 782, concluding with the words "further cross examine."

Page 783, commencing with the caption "Redirect Examination" and continuing through to the end of page 793.

[fol. 259] Page 797 and continuing through page 813 to the end of the sentence concluding "cooperating with them."

Page 845, commencing with the caption "Feedlots" and continuing through to the end of the first paragraph on page 846, concluding with the words "specific animal (T. 2227)."

Page 872, commencing with the caption "Baby Beef and Pig Club" and ending with the second paragraph on said page, concluding with the words "property used."

Page 877, commencing with the caption "Sale of Feed" and continuing through to the end of the first paragraph on page 878, concluding with the words "rail and truck."

Page 884, commencing with the caption "Feedlots" and continuing to the end of the page.

Page 886, commencing with "C. F. Topping, a witness called by respondent" and continuing to the end of the third paragraph on page 891, concluding with the words "this alley."

Page 906, commencing with the caption "Anchor Serum Company" and continuing through to the end of the first paragraph on page 908, concluding with the words "Serum Company (T. 2384)."

Page 911, commencing with the caption "Zone 1" and continuing through to the end of the first paragraph on page 912, concluding with the words "non-used and useful."

Page 912, commencing with the caption "Zone 2" and continuing through to the end of the first paragraph on page 913, concluding with the words "the year 1932."

Page 913, commencing with the caption "Baby Beef and Pig Club Show" and continuing through to the end of the first paragraph on page 915, ending with the words "the year 1932."

Page 922, commencing with the caption "Income for Rate-making Purposes" and continuing to the end of the first paragraph on page 923, concluding with the words "in his testimony (T. 2425)."

Page 935, commencing with the caption "Cross-Examination" and continuing to the end of the first paragraph on page 948, concluding with the words "as public markets."

Page 963, commencing with the caption "Feedlots" and continuing to the end of page 973.

Page 983, commencing with the caption "Transit House" and continuing to the end of the first paragraph on page 987, concluding with the words "rate base."

[fol. 260] Page 1001, commencing with the caption "Redirect Examination" and continuing to the end of the second paragraph on page 1003, concluding with the words "in those facilities."

Page 1005, commencing with the caption "Anchor Serum Company" and continuing to the end of the second paragraph on said page, ending with the words "21 per cent."

Page 1006, commencing with the caption "Transit House" and continuing to the end of the following paragraph, concluding with the words "ever came here."

Page 1019, commencing with the caption "Going Concern Value" and continuing through page 1039 to the end of the sentence in the sixteenth line concluding with the words "experience of 22 years."

Page 1042, commencing with the caption "Income for Rate-making Purposes" and continuing to the end of the table on page 1044.

Page 1046, commencing with the caption "Change in Conditions Affecting Income" and continuing to the end of the second paragraph on page 1051, concluding with the words "rail to truck (T. 2730)."

Page 1052, commencing with the caption "Land Values" and continuing to the end of the following paragraph which concludes with the words "credit was made."

Page 1052, commencing with the caption "Cross-Examination" and continuing to the end of the first paragraph on page 1053, concluding with the words "assistant treasurer (T. 2736)."

Page 1062, commencing with the caption "Income for Rate-making Purposes" and continuing to the end of the second paragraph on page 1064 which concludes with the words "spread were applied (T. 2770)."

Page 1065 to the end of the first paragraph on page 1083, concluding with the words "Chicago, Illinois."

Page 1083, commencing with the caption "Land Values" and continuing to the end of the second paragraph on page 1092, concluding with the words "less rocky formation."

Page 1092, commencing with the caption "Redirect Examination" and continuing to the end of the next to the last paragraph on page 1093, concluding with the words "Railway Company."

Page 1094, commencing with the caption "Surrebuttal Testimony of Respondent" and continuing to the end of page 1101.

[fol. 261] The portions of the narrative statement not to be printed by the Clerk of the United States Supreme Court have been deleted with red pencil in the three volumes referred to in this stipulation and which are hereto attached and made a part hereof.

It is hereby stipulated that the Clerk of this court, in preparing the transcript of record on appeal in the above entitled cause to the Supreme Court of the United States, shall certify to said court certain original exhibits which were offered in evidence upon the hearing of the application for a permanent injunction herein; that said exhibits and other documents so attached to said condensed narrative of the abstract of evidence shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom, and that any party hereto may refer to said original exhibits and other documents in their briefs and oral arguments with like effect as though they were printed parts of the record; said exhibits to be so certified by the Clerk of this court to the Supreme Court of the United States as original exhibits,

and not as a part of the transcript of the record, bear the following numbers:

Government Exhibit No. 103.
" " " 104.
" " " 105
" " " 106.
" " " 107.
" " " 107-A.
" " " 108.
" " " 109.
" " " 110.
" " " 111.
" " " 114.
" " " 118.
" " " 121-A.
" " " 121-B.
" " " 121-C.
[fol. 262] " " " 122.
" " " 128.
" " " 129.
" " " 130.
" " " 131.
" " " 132.
" " " 133.
" " " 134.
" " " 135.
" " " 142.

Respondent's Exhibit No. 101.
" " " 102.
" " " 103.
" " " 104.
" " " 105.
" " " 106.
" " " 107.
" " " 108.
" " " 109.
" " " 110.
" " " 111.
" " " 111-A.
" " " 113.
" " " 114.

Respondent's Exhibit No. 115.
" " " 116.
" " " 117.
" " " 118.
" " " 119.
" " " 120.
" " " 121.
" " " 122.
" " " 123.
" " " 124.
" " " 125.
" " " 126.
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" " " 130.
" " " 131.
" " " 132.
" " " 134.
" " " 138.
" " " 139.
" " " 143.
" " " 144.
" " " 145.
" " " 146.
" " " 147.
" " " 148.
" " " 151.
" " " 152.
" " " 153.
" " " 154.

[fols. 263 & 263½] It is further stipulated that the narrative statement of evidence filed herein, which includes a narrative statement of the oral testimony taken before the Secretary of Agriculture in said proceeding entitled "Docket No. 298, Secretary of Agriculture vs. St. Joseph Stock Yards Company", together with the original exhibits hereby stipulated to be transmitted to the Supreme Court of the United States, set forth in condensed form all oral testimony offered on the trial hereof and all testimony offered

in the form of exhibits, which is essential to the decision of the questions presented by the appeal.

Wendell Berge, Counsel for the United States of America and Secretary of Agriculture. R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner.

September 11, 1935.

[fols. 264-274] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Docket No. 298

In re SECRETARY OF AGRICULTURE

vs.

ST. JOSEPH STOCK YARDS COMPANY, Respondent

Abstract of Record

Hearing held at St. Joseph, Mo., December 2 to 17, 1929

[fol. 275] [Title omitted]

The following is a copy of the order of inquiry and notice of hearing, which instituted the above entitled proceeding.

(Caption omitted)

ORDER OF INQUIRY AND NOTICE OF HEARING

It appearing to the Secretary of Agriculture that the St. Joseph Stock Yards Company, South St. Joseph, Missouri, respondent, is engaged in the business of conducting or operating a stockyards at South St. Joseph, Missouri, which has been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and which has been posted as such; that in accordance with the requirements of said Act, respondent [fol. 276] has heretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner, and that on September 30, 1929, respondent made and published Tariff No. 5, which was filed with the Bureau of Animal Industry to become effective October 10, 1929; and

it further appearing that a proceeded*ing* under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedules of rates and charges as set out in Tariff No. 5-

It is therefore ordered that notice to the above-named respondent be, and hereby is, given that a hearing upon the reasonableness and lawfulness of the rates and charges as provided for by said Tariff No. 5 will be held before an Examiner designated by the Secretary of Agriculture, in the Federal Building, St. Joseph, Missouri, beginning on the second day of December, 1929, at the hour of ten o'clock a. m., or as soon thereafter as the parties may be heard, and continuing from time to time until said hearing is completed. At the above hearing the said respondent and all interested parties will have the right to appear and present such evidence with respect to the matters and things set forth as may be relevant.

In witness whereof, The Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 9th day of October, 1929.

R. W. Dunlap, Acting Secretary of Agriculture.

(Official Seal.)

[fols. 277-286] **Abstract of Evidence**

EVIDENCE OFFERED BY GOVERNMENT

Pursuant to the above order of inquiry the hearing therein specified began at the designated place in St. Joseph, Missouri, on December 2, 1929, before an Examiner of the Department of Agriculture. The Government and the respondent were present by counsel.

[fol. 287] Land Appraisal by Government

W. L. MACK, a witness called by the Government, after being duly sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph, Missouri, and engage in the real estate business at 224 Illinois Avenue in that part of St.

Joseph known as South St. Joseph. My office is two blocks from the stockyards. I have been in the real estate business since March 1, 1910, and at the present location 3 years. I moved there from 322 Illinois Avenue. Prior to March 1, 1910, I had no real estate experience. During all the time I have been in the business I have been located in South St. Joseph (T. 15). I do not specialize in any particular property or location but for ten years I specialized in sub-divisions. I handle property anywhere in the City of St. Joseph and farm lands in Buchanan County. The greater volume of my business is in South St. Joseph. I am a native of Kansas but have lived in St. Joseph 31 years. Before going into the real estate business I was in the barber business for eleven years.

[fols. 288 & 289] The first experience I had in valuing land of any importance was some three years ago when, with five other gentlemen, I attempted to re-value the City of St. Joseph for tax purposes (T. 16). We were engaged in that work about five months but were stopped by an injunction before we finished. My other experience in land valuation has been with reference to minor tracts. I never had as big a job as the valuation of the St. Joseph Stockyard Company's land. I am a member of the real estate board and we are called upon to appraise property very frequently. This year we appraised something like $200,000 of property for the school board. In 1921 I did some work for the Burlington Railroad. There were twenty-two pieces of property in Florence Addition just adjacent to the stockyards. It was not of the same general character as the stockyards property but was cheap resident property occupied by more humble homes and rather low, and my appraisal was the outgrowth of damage suits of individuals against the Burlington Railroad for flooding their property (T. 17).

I made for the United States Department of Agriculture an appraisal of the lands of the St. Joseph Stockyards Company. I finished it in August, 1927, and was engaged upon it some 60 or 75 days. I made a report of that appraisal of which Government Exhibit 4-D is an exact copy.

Government Exhibit 4-D

This exhibit will be found in the volumes of this abstract entitled "Exhibits."

The field work of that appraisal was completed about July 15, 1927, and it took me about two weeks to compile the report.

[fol. 290] Government Exhibit 4-L is a true copy of my report as of October, 1929, except my report showed 450.743 acres and Government Exhibit 4-L shows 449.874 acres. This variance is due to the correction in the acreage of tract No. 7. I did not make that correction on my report. The appraisal value of tract No. 7 has been corrected to conform to the correction in acreage.

GOVERNMENT EXHIBIT 4-L

Valuation of Real Estate
St. Joseph Stock Yards Company, St. Joseph, Missouri
Areas Corrected as Shown in Attached Correspondence
Values Taken from Revised Appraisal by Mr. W. L. Mack, Dated October 28, 1929

Tract Number	Area		Appraised Value		
	Acres	Sq. Ft.	Per Acre	Per Sq. Ft.	Total
A	46.500	2,025,540	$15,246.00	$.350	$708,939.00
B	1.170	50,965	15,246.00	.350	17,837.75
B-1	0.600	26,136	15,246.00	.350	9,147.60
C	60.900	2,652,804	15,246.00	.350	928,481.40
D	43.580	1,898,345	8,712.00	.200	379,669.00
E	11.600	505,296	10,890.00	.250	126,324.00
1	22.537	981,712	1,000.00	.023	22,579.38
2	10.880	473,933	750.00	.017	8,056.86
3	9.100	396,396	500.00	.0115	4,558.55
4	55.900	2,435,004	3,049.20	.070	170,450.28
5	10.000	435,600	10,890.00	.250	108,900.00
6	24.900	1,084,644	500.00	.0115	12,473.41
7	5.652	246,198	500.00	.0115	2,831.27
8	28.000	1,219,680	500.00	.0115	14,026.32
9	12.000	522,720	500.00	.0115	6,011.28
10	2.600	113,256	500.00	.0115	1,302.44
11	56.600	2,465,496	4,356.00	.100	246,549.60
12	28.400	1,237,104	6,534.00	.150	185,565.60
13	0.870	37,897	574.71	.013	492.66
14	18.085	787,783	4,332.70	.100	78,778.30
	449.874	19,596.509			3,032,974.70

[fol. 291] Government Exhibit 4-M is my opinion of the present day value of tract No. 14 and of tracts A, B, B-1 and C for any other purpose than that for which it is used at the present time.

GOVERNMENT EXHIBIT 4-M

Supplement to Appraisal of the lands of the St. Joseph Stock Yard Company at St. Joseph, Missouri

The values of 35 cents per square foot ascribed in my appraisal to the tracts designated therein as "A", "B", "B-1" and "C", are predicated upon the particular value of those tracts for stockyard purposes. Their values for the highest and best uses, other than stockyard purposes, of which they are susceptible are, in my opinion, 20 cents per square foot.

The value ascribed to the tract designated in my appraisal as No. 14 is as of the year 1927. Since that time values of similar and adjacent lands within the corporate limits of St. Joseph, Missouri, have, in my opinion, declined and are now 25 per cent lower. Therefore the present value of this tract No. 14 is 7½ cents per square foot.

These values, applied to the areas of the aforesaid tracts "A", "B", "B-1", "C" and "No. 14", are tabulated as follows:

Tract No.	Acres	Square Feet	Appraised Value Per Acre	Per Sq. Ft.	Total
A	46.500	2,025,540	$8,712.00	$.20	$450,108.00
B	1.170	50,965	8,712.00	.20	10,193.00
B-1	0.600	26,136	8,712.00	.20	5,227.20
C	60.900	2,652,804	8,712.00	.20	530,560.80
No. 14	18.085	787,783	3,267.00	.075	59,083.75

(S.) W. L. Mack, Land Appraiser.

The method I pursued and my procedure in arriving at the valuation of these lands of the stockyards company may be described as follows: Each tract has a separate idea as to value. My tracts A, B, B-1 and C are particularly located for the use to which they are put. No other tract in the entire acreage has the same value as these. This is due to the fact that sewerage, water, light, accessibility to transportation and things of that nature are possessed by tracts A, B, B-1 and C (T. 25). Railroad facilities also play an important part in the value of these tracts.

[fol. 292] I examined each separate tract. I also examined sales that had been made of adjacent and near-by lands and embodied an account of such sales in my report which is Government Exhibit 4-D. My valuation of these

various tracts of respondent's lands is based upon my general knowledge and experience in the real estate business in South St. Joseph and also from a comparison with actual sales of adjacent lands (T. 26). The difference in value of tract No. 14 between the 10¢ per square foot shown in my appraisal report of October 28, 1929, and the 7½¢ per square foot shown in the supplement to that appraisal (Government Exhibit 4-M) is due to the general shrinkage in real estate values of the entire territory of residential property adjacent to tract No. 14 as is shown by sales made this year (1929) in various property in that vicinity. It is for that reason that I draw the conclusion that there has been a shrinkage in value. No shrinkage in value has occurred since October 28, 1929 (the date of Government Exhibit 4-L). The same value per square foot, namely 10¢, is shown for tract No. 14 in the 1927 appraisal (Government Exhibit 4-D) as in the 1929 appraisal (Government Exhibit 4-L) (T. 27), but there is a variation of $2,000 in the total. This variation is due to a difference in the number of square feet shown for tract No. 14 in the two reports (T. 28).

Tract No. 14 as shown on Government Exhibit 4-O is divided into several different blocks. The present value of 7½¢ per square foot covers the entire tract. A three-story hotel known as the Transit House is located on a small square of land in the north end of tract No. 14 which square is marked No. 40 on Government Exhibit 4-O. I have estimated the value of the land in that square. This value is entirely for business purposes. A certain tract back of it was formerly occupied by the stockyards as a horse and mule market and is used today as a sheep [fol. 293] feeding barn. If the buildings on that part were destroyed the land would be good only for residential purposes (T. 29); that is, the land back of the Transit House. It would have no value as business property whatever but the Transit House site (block 40 in tract No. 14) is valuable as business property and is worth seven or eight times as much as the land in tract No. 14 which lies back of it. The Transit House site and the other portions of tract No. 14 which front on Illinois Avenue, exclusive of the buildings located on them, (T. 30) was worth in 1927 $200.00 a front foot (T. 32). That has been subject to a decrease of 25% due to prohibition, to the soft drink parlors, about six or seven buildings in that block, which have been locked up,

and no rental is being received from them. Therefore, it is my opinion that the value of that part of tract No. 14 which is occupied by the Transit House is now $150.00 per front foot and the corner lots on each side of the Transit House would be worth more. My opinion is based upon rental values and sales on the other side (T. 32). My recollection is that this north half of block No. 8 which is the part of tract No. 14 upon which the Transit House is located is 158 feet and a fraction deep (T. 34).

In appraising tract No. 14 I took into consideration the front footage of the Transit House and each block separately all the way through the tract, adding to it the vacated streets and squaring it into square feet. I took the total and prorated it over the entire tract as required by my contract, to arrive at the value per square foot. By contract I mean my contract with the Department of Agriculture. It has been a long time since I did that (T. 30) but my recollection is that I valued the block across Indiana Avenue at $20.00 a front foot and the block on Massachusetts Avenue at the same value. That is, I placed a value of $30.00 a front foot on the south half of block No. 8 and [fol. 294] the north half of block No. 9; $25.00 on the south half of block No. 9 and the north half of black No. 18; $20.00 on the south half of block No. 18 which is in the South St. Joseph Town Company's Second Addition and on the north half of block No. 1; $17.50 on the south half of block No. 1 and the north half of block No. 12; $15.00 on the south half of block No. 12 and the north half of block No. 13; $12.50 on the south half of block No. 13 and the north half of block No. 20; $10.00 on the south half of block No. 20. Certain of the streets formerly running through tract No. 14 have been vacated. I added the area of those vacated streets and prorated it at the same ratio per square foot. That is how I arrived at my valuation of that tract of land based entirely upon the market value of the land which is across the street in the same addition.

The above-mentioned blocks 1, 12, 13 and 20 are in the South St. Joseph Town Company's Third Addition (T. 31). In that way I arrived at my valuation of 10c per square foot when I was compiling my report during the month of July, 1927, and I arrive at my present value of 7½c per foot on the basis that vacant property in that locality has shrunk 25% in value (T. 32). In making my 1929 revision (Government Exhibit 4-L) of my appraisal

and report which was made in 1927 (Government Exhibit 4-D) I didn't change any prices but only revised the areas. I did not change the prices because I was not requested to do so. I did not understand that I was to bring the prices up to date (T. 34). The revision of the value of tract No. 14 from 10c per square foot to the 7½c per square foot shown in Government Exhibit 4-M was made to take care of the 25% decrease of which I have spoken. That is the present day value and applies only to that part of tract No. 14 which is inside of the City. It doesn't apply to any tract except No. 14. The reason for not applying it to [fol. 295] respondent's other lands is that I know of no sales which would justify the shrinkage while I do know of numerous sales of property adjacent to this tract No. 14 that would justify that shrinkage in price. Respondent's other property is not within the corporate limits of St. Joseph, but tract No. 14 is. In that particular territory, the 25% shrinkage in value applies to land within the corporate limits (T. 35); that is, to plotted lands rather than industrial lands. Take for instance the St. George Addition which lies immediately north of that and joins tract No. 14 on the north of Cherokee Street, I think from there to Missouri Avenue. There is a great deal of vacant land in there. The same shrinkage in price would apply there from Missouri Avenue to Alabama Street.

I have not revised the prices of any of respondent's land that lies outside of the corporate limits of St. Joseph. There have only been two recent sales of any part of that property and one of those is the sale to the Insoboard Company of land within tract No. 1. I understand that the price it sold for was identically the price at which I appraised it.

There is a difference in the total land areas used in my report and that shown in the report of Mr. Spratt. This variation occurs in several of the tracts and is due to the land under lease to the Belt Railroad (T. 36). Mr. Spratt's appraisal shows 77.46 acres less than mine. 43.58 acres of that difference is included in my tract D which is the Belt Railroad lease and the remaining difference is covered in my tracts A, B, B-1 and C by the Belt Railroad lease. When I made my tabulations I did not know that the Belt Railroad lease was included in those tracts (T. 37). The land leased to the railroad in tracts A, B, B-1 and C is the

same kind as that used for the stockyards and knowing its location I would appraise it at the same value.

[fol. 296] Referring to Government Exhibit 4-M, the supplement to my appraisal, the valuation of 20c per square foot there placed upon tracts A, B, B-1 and C is explained as follows: I think the present use to which that land is being put is its best use. I didn't think that any other industry could use that land as advantageously as the stockyards company could. I know of no industry that we have or would be likely to come to St. Joseph that would use that large area of land. Consequently, it would be necessary to sub-divide it which would be a very expensive proposition and the cost of sub-division would reduce the value very materially. 35c was the value I placed upon the land when used for stockyards purposes. I had no idea of appraising it for any other purpose than that. 20c per square foot is the value when used for any purpose other than stockyards (T. 38).

The relationship between tracts A, B and C and the land leased to the Belt Railroad which adjoins those tracts would make those lands of the same value.

Thereupon the Government offered in evidence the documents and papers heretofore identified and testified to as Government Exhibits Nos. 4-D, 4-L, 4-M and 4-O, to which respondent objected on the ground that they evidently are to be used for the purpose of enabling the Secretary of Agriculture to determine the value of the property of the St. Joseph Stockyards Company and, under the statute, the Secretary has no authority to value that property. Respondent also objected to all the testimony of the witness Mack which had been given for the purpose of determining value and moved to strike the answers of said witness. The objection was overruled by the Examiner and the exhibits received in evidence and the motion to strike the testimony of the witness Mack in regard to value was denied, to which ruling of the Examiner respondent then and there [fol. 297] excepted. Thereupon it was agreed between counsel for the Government and counsel for the respondent and the Examiner that throughout the proceeding it should be understood that this objection, ruling and exception, applies to any and all evidence with reference to the values of respondent's property without the necessity of repetition of the objection, ruling or exception (T. 40).

The Government offered in evidence as Government Exhibit No. 5 copy of a map which this witness testified had been furnished him by respondent and which he had forwarded to Government's engineer, Hermann C. Henrici. The purpose of this offer was to show that the map which formed the basis of Government Exhibit 4-O had been received from the respondent but, upon counsel for the respondent stating that there was no objection to Government Exhibit 4-O on that ground, the offer in evidence of Government Exhibit No. 5 was withdrawn (T. 42).

At this point the witness identified Government Exhibit 4-R as a map of the City of St. Joseph and stated that he was familiar with the map (T. 44). He marked thereon the red figures 1 to 9, inclusive. This identified the tracts listed and described on that page of Government Exhibit 4-D which is entitled "Transfers of Vacant Land adjacent to the St. Joseph Stockyards Company". He stated that the numbers 3 and 4 apply to the same tract for the reason that No. 3 represents a conveyance to an individual and No. 4 a conveyance of the same land by that individual to a company which he had formed.

Then the witness indicated on the map by the numbers 10 to 25 the tracts of land listed on that page of Government Exhibit 4-D which is entitled "Transfers of Improved Land adjacent to the St. Joseph Stockyards Company." He explained that tract marked 10 is the same land as that [fol. 298] previously marked 5, the reason being that when he purchased that land for the Kelsey Nurseries from the St. Joseph Street Railway, Light and Power Company on October 28, 1913, it was vacant land but when the Kelsey Nurseries transferred it to Edward Welch on May 21, 1917, there had been erected upon it a frostproof warehouse and office that greatly improved it. He also stated that the Kelsey Nurseries is a corporation of which Edward Welch is a majority stockholder (T. 46).

Then the witness indicated on the map by the numbers 32 to 35, both inclusive, the tracts listed on Government exhibit 4-D as transfers of improved land in the vicinity of but not adjacent to respondent's land.

Thereupon the Government offered in evidence as Government Exhibit 4-R, a map of the City of St. Joseph identified and testified to by the witness. There was no objection to the introduction of the map except in so far as it

showed certain transfers of property which respondent deemed irrelevant to issues in this proceeding (T. 17).

[fol. 299] Cross-examination for purpose of respondent's objection:

The only part of respondent's land to which I applied these transfers No. 1 to 9 from a mathematical standpoint was that portion of tract No. 14 on which the Transit House is located. This is because these transfers are in the vicinity of the Transit House. As to the other transfers I put them in my report because the Government required me to furnish a certain amount of transfers of land adjacent to but not immediate to respondent's land, and I did that. I do not think the other transfers shown on Government Exhibit 4-R have any bearing whatsoever on the value of respondent's lands (T. 48).

Thereupon respondent completed its objection to Government Exhibit 4-R by stating that it objected to the transfers thereon shown as Nos. 26 to 35, inclusive, but not to transfers Nos. 1 to 25, in so far as they may show the value of tract No. 14 of respondent's land.

Continuing his testimony, the witness explained his previous statement that he regarded certain transfers as having no bearing on the value of respondent's land, by saying: The reason for that is that there has been prevalent in St. Joseph ever since I have been in the real estate business a practice of not showing actual considerations in deeds and it would be very difficult, where the consideration is shown as $1.00, for me to determine what the real sale price was. For that reason, not being personally acquainted with those individual tracts of land, not having sold them, I disregarded them.

Thereupon respondent renewed its objection (T. 49) and the witness continued under examination by counsel for the Government to testify as follows: Then with respect to tract No. 28; for instance where the consideration is [fol. 300] stated as having been $5,250 I do not know what the true consideration may have been (T. 50).

Thereupon the Examiner overruled respondent's objection and respondent moved to strike that part of Government Exhibit 4-D which is designated Exhibit 5 and is the

page which refers to the aforesaid transfers Nos. 26 to 35, inclusive (T. 52) and the motion was denied by the Examiner. To the ruling of the Examiner in both respects respondent excepted.

Direct examination continued:

I based my appraisal of respondent's lands outside of the corporate limits of St. Joseph upon the intimate knowledge of the cost of producing it, the valuation of it as a stockyards brought about by a city of the character and size of St. Joseph and upon the accommodation of the agricultural country furnishing adequate market for its products such as corn and livestock of various kinds. In making my appraisal I used my general knowledge gained in my experience as a real estate man (T. 53).

Cross-examination:

I have been and still am a member of the appraisal committee of the St. Joseph Real Estate Board. The committee consists of 9 members, 3 of whom are designated by the President of the Board for each appraisal. Mr. Wm. E. Spratt is Chairman of that committee. The appraisal we made for the School Board purposes covered something like 50 or 60 parcels of property. I assisted in the appraisal of 2 parcels (T. 54). There were a number of different sites for schools, some 5 or 6 of which have been appraised and others are to be appraised by members of the committee of 9.

I do not have here a copy of my contract with the De- [fol. 301] partment of Agriculture. At this point counsel for the respondent requested a copy of the contract between the Department of Agriculture and the witness covering the appraisal of respondent's property. Counsel for the Government agreed to furnish such copy (T. 56).

My first appraisal of respondent's property is shown in Government Exhibit No. 4-D. That appraisal was made as of August 1, 1927. I spent about 60 days of work on it prior to that date. Page 2 of Exhibit No. 4-D shows the unit price. The statement, "The values established are fair market values as of the present date, careful consideration having been given all known factors having any bear-

ing thereon", appears in my appraisal (Government Exhibit No. 4-D) (T. 56). That was my opinion at that time and is still my opinion as to all respondents property lying outside the City of St. Joseph. That is, used in the stockyards but not with respect to trac*k* 14, which is inside the city. I say that is my opinion when it is used for stockyards purposes. In other words, the supplement (Government Exhibit No. 4-M) changes its valuation when it is used for something else. Referring to the above quoted statement from my appraisal (Govt. Exhibit No. 4-D) I had considered everything I knew of at that time (T. 57). It is still my opinion, except as to tract 14. With the exception of that tract, the unit prices referred to on page 2 of Government Exhibit 4-D, represent my opinion of the present value of the property of the St. Joseph Stockyards Company after carefully considering all known factors having a bearing upon the valuation of that land (T. 58).

I have before me Government Exhibit No. 4-M which I prepared last week. The preparation of it arose from a discussion with attorneys as to the use of respondent's property for any purposes other than stockyards. That applies to the part of the property now occupied by the [fol. 302] pens. I cannot say that it had ever occurred to me to value this land for any purposes other than the purposes for which it is being used, but it occurred to me that it might be used for something else. It was last week that I first conceived the idea that respondent's land should be valued for use other than stockyard purposes (T. 59). I have not had the pleasure of making an appraisal of anything like the stockyards before. When I have appraised other lands such as the School Board lands, I have not excluded certain purposes for which the land might be used, and have considered such lands as it existed at the time. I have not tried to imagine that it was used for some purpose different from that to which it was devoted at the time of the appraisal. When the question as to the value of the respondent's land for purposes other than a stockyard was asked and discussed, I immediately began to think of what would happen should the stockyards be moved off there tomorrow and that particular piece of ground be converted into some other use. It is bounded on the east by railroads with no ingress or egress except at Missouri and Illinois Avenues until you go west to

Packers Avenue (T. 60). I could conceive of no factory coming into St. Joseph that would utilize that piece of ground to its entirety as the stockyards uses it. Consequently, it would be necessary to use it for subdivisions into smaller tracts of land, which would take a tremendous amount of expense, being in fact practically prohibitive, except that an engineer could run a street through some convenient place west of the tracts and cross on Arizona, Wyoming and Dakota; Texas or Colorado streets on the east side of the tracts. In my opinion, such a street would be about 4 feet lower than the grade of the level of the stockyards' land. The same condition exists south of Illinois Avenue, where the streets have been vacated until you [fol. 303] get clear down to Michigan Street. I hope the stockyards will never move away from South St. Joseph, Mo. and I have no idea that they will, except that there are continuous rumors that they are going to, but I do not credit the rumors. I hope and believe that the stockyards will be one of the industries of the community for years to come and I hope they will grow. In preparing Government Exhibit No. 4-M, I did not consider whether the stockyards would or would not be moved away, but only if they were so moved, it would be necessary to establish other industries (T. 61).

In setting up on Government Exhibit No. 4-M, values of 20c per sq. ft., I have just presumed that the stockyards are not there and that the packing plants would be gone also. I have not presumed that the St. Joseph Belt Railroad would be gone. It may be that the Belt Railroad would disappear with the stockyards and packing plants but the Terminal Railroad would serve the same purpose for other industries. I did not pick out any particular industry for this land which would give it a value of 20c per sq. ft. It naturally would be something entirely divorced from the stockyard and packing house industries. It might be grain elevators, grain mills or small factories (T. 62).

I cannot conceive of St. Joseph being fortunate enough to get another industry of the size of the combined stockyards and packing house industry, now at St. Joseph. Even if I assumed that it could, I do not think that respondent's land would have for such an industry the value it has for stockyard uses. I would have to analyze pretty much in detail the character of this proposed industry to

determine what would be the value of the land to it. Until I know its character, it would be more or less a matter of conjecture as to what the land would be worth to it.

In valuing respondent's land as shown in Government [fol. 304] Exhibit 4-D, I did not arrive at the value of the land used by the packing plants. I am familiar with the location of Swift & Co. and Armour & Co. plants (T. 63). I would not at the present time place upon the land used by them the same value as respondent's land. The relationship between the stockyard company and the packers is partly responsible for my ideas of the valuation of the land used by the stockyard company—that is, the relationship of one to the other and also to that part of the belt railroad that lies in front of the stockyard company's loading and unloading docks. If one analyzes the various tracts of land lying further back, I think one would realize that I did not consider that as of as great value as the highly developed land lying along the railroad tracks.

As a general proposition I would consider that land which is being actively used is of more value than vacant land adjoining it. However, in my report I made certain allowances for the particular tract of land lying south of the hog yards that is used by the serum company, because that land is available for immediate development in expanding the stockyard. Also, the tract of land lying south of Armour Packing Co. is highly developed. I recall the tract south of Armour Packing plant as well as another tract of 11.6 acres, which lies north of Swift & Co. plant (T. 64). I value those lands at 25c per square foot. I consider them as expansion land for the packing plant. It follows, therefore, that the land occupied by the packing plants of Swift & Co. and Armour & Co. would have a value equivalent to 25c a square foot. That is occupied land, but I did not take into consideration the land that is occupied by the packers. I did consider the possibilities of additional packing houses and cold storage warehouses, or something of that nature, with vacant lands on both [fol. 305] sides of them. I didn't give any consideration to the value of the land used by the present packing houses. However, I will say now that I think it would be practically the same value (T. 65).

In comparing the values of the packing house sites and of the vacant land adjacent on the north and south of them,

I have not considered whether there would be a difference in value, because the former are being used and the latter is not. Normally that is a factor which is considered. I know that the two tracts shown in my appraisal as E and 5 are awaiting expansion of packing plants, warehouses, or something of that kind. The land that is being used by Swift & Co. and Armour & Co. is being intensively used for packing house purposes. If I were appraising a piece of property in the retail section of St. Joseph and I was working for you and you asked me to assume for such an appraisal that the retail section was wiped out, I probably would consider it (T. 66). I am just answering you frankly as I did in this case down there when the question was propounded to me, "what would that land be worth if it were used for something else." I say in my report its best use is for packing house purposes. If I were working for you and you asked me to consider certain factors, I would certainly do it. In making an appraisal I would consider, as everyone should, the interest of my client but would not be governed by it. When my appraisal of respondent's property, as stated in Government Exhibit 4-D, was made I appraised it as I thought it should be and I still think so. I would say that real estate men generally appraise property for its highest and best use. (T. 67).

Let me say something to you here. You seem to be trying to impress on me about this appraisal of property. Now there is no other case of appraisal of property that I [fol. 306] have ever done, and none that I know of, where one man has gone out and appraised it by himself. Now you are represented here by Mr. Spratt and Mr. Atkinson, who, with their intimate knowledge of 40 years of real estate business, have discussed various factors. I was doing this by myself with nobody to discuss it with and never did discuss it with anybody. I had to go out and take the individual tracts and set down and fix them out as best I could by myself without any intimate knowledge of whether I was right or wrong.

I notice that my appraisal of that tract 5 is now twice as much as Mr. Spratt's. Those are honest opinions, Mr. Spratt's and mine. Possibly his opinion was arrived at in talking with Mr. Atkinson. My knowledge came from being down there and watching the development from the frog pond up to the present time, and I considered it more val-

uable than they individually have considered it; that is because of my intimate knowledge of that particular tract and also the other tract there adjacent to Swift & Company. When I prepared my Exhibit No. 4-D, I put in it my own individual knowledge. I did not discuss that with anybody. It is still my opinion.

I would be very sorry to have the packers leave So. St. Joseph if I had to continue in the real estate business there. In that event I would have to look out for a new industry, but I would probably leave with them, if I knew that they were going (T. 68).

The land fronting on Illinois Ave. and occupied by the Transit House is worth at the present time about $150 a front foot. I don't think it would be worth anything like that amount if the packing houses and stockyards were moved away. The effect upon the city of St. Joseph as a whole of moving those industries would be very demoralizing, but Mr. Spratt and Mr. Atkinson should give you a [fols. 307-310] better idea of that than I, because they were there before I came. The packing houses and stockyards constitute the largest industry in the community, and wiping it out would be very demoralizing to the city and the entire country. I think it would cause land values all over the city to decrease.

[fol. 311] Redirect examination:

After Mr. Henrici, the Government's engineer, Mr. Bohannan, counsel for the Government, and I had discussed the matter of the supplement to my report which is now Government Exhibit 4-M, I gave very careful consideration and study to what would be the next best purpose for which respondent's land could be used. After considering it from every angle, of which I could think (T. 73) and taking into consideration other tracts of land in South St. [fol. 312] Joseph not owned by respondent, as comparative locations for similar industries, I formed my conclusion that 20¢ per square foot would be a fair valuation. The conference to which I have referred took place in the stockyards supervisor's office. No suggestion that my appraisal was too high was made to me and there was no criticism of it whatever. No one suggested to me any price that I should find. I do not recall that I was requested to do anything in particular. I do not remember whether it was Mr.

Bohannan or Mr. Henrici who asked me the question but immediately I began to think along the line as to what the land could be used for and thought out my own ideas without any reference or any suggestion from anyone. The fact of the matter is I have never had a suggestion from a single person in arriving at my valuation of this land. It was my own personal opinion without any suggestion from the Department of Agriculture or anyone connected with it (T. 74).

The fact that I have arrived at a value of 20¢ per square foot for this land for purposes other than stockyards does not change my opinion in the least that for stockyards purposes the land is worth 35¢ a foot. If I assume that the stockyards were moved to the west side of the packing plants and operating there and the packing plants running and the railroads just as they are and South St. Joseph unchanged, but the tracts A, B, B-1 and C now occupied by the stockyards would be left vacant with no sewers, water mains or anything on them, just bare land, I would say that the value of that land would be 20¢ a square foot. This is for the reason that it would still have the advantage of being outside the corporate limits and would not be subject to the rules and regulations of the City as compared with other lands adjacent to it.

[fol. 313] I recall the conference in my office last Saturday at which Mr. Bohannan, attorney for the Government, was present (T. 75). The particular matter discussed was the checking up of the variations between Mr. Spratt's division of the tract of land on which the Transit House stands with my manner of appraising it. I was asked to consider the value of the Transit House lot separate from the remainder of tract No. 14. I have considered that aspect of it at all times and the only reason for not listing it separately was the fact that my contract provided that I was to list the tract in square feet instead of separating it. I used the manner which I described yesterday, compiling it into square feet and not considering front foot prices in the final conclusions. We discussed the valuation of the Transit House site and I arrived at the conclusion to which I have testified that it was worth $150.00 a front foot. I also found it to be 158 and a small fraction feet deep and on that basis my valuation of it is approximately 95¢ a square foot. That valuation was arrived at in my office last

Saturday (T. 76). At that time I had received a copy of Mr. Spratt's appraisal in which the Transit House site was valued at 40¢ per square foot.

Recross-examination:

In what I have said on re-direct examination I did not intend to contradict anything I said on cross-examination and I would give the same answers today I did then. The suggestion as to a use for respondent's land other than for stockyards came from someone representing the United States Government (T. 77). I am assuming that if the stockyards were moved to the west side of the packing plant there would be plenty of land to accommodate it. I think in fact there is enough. Of course you might draw [fol. 314] a line so that there would not be sufficient and you might draw another line leaving a plenty. It is true that I stated in Government Exhibit 4-D that I could not comply with the requirement to ascertain the sale prices of tracts of land similar to respondent's properties because no such tract exists. If the stockyards were moved to the west side of the packing plants it would involve much more than merely moving the pens (T. 78). Not only the St. Joseph Belt Railroad but all the line haul carriers are built around the location of the stockyards. If the stockyards were moved to the west of the packing plants someone would have to revamp the entire rail situation. At the present time there is not sufficient railroad facilities on the west side and no sewerage there at all for pen use. I am not so sure about water, but I think there are some mains over there but they would have to be revamped to suit a new situation (T. 79). At the present time the packing plants receive livestock on the east side of the plants. If the stockyards were moved to the west side of the packing plants the livestock would have to be driven around to the east side of these plants and then processed back through the plant. I do not conceive that the present stockyards will ever be moved to the west side of the packing plants but if that were done I cannot conceive of it causing any great change in Illinois Avenue for I would see no reason for such change (T. 80). I don't think merchants would locate along that part of Illinois Avenue which now runs through the stockyards, eating houses might and also saloons, if we had them, and things of that nature, but I do not think the

merchants would move as that would necessitate changing the transportation lines and things of that kind. Illinois Avenue is a focal point for all employees of the packing houses, that is Illinois Avenue and Cherokee Street. They [fol. 315] get off the trolley cars there and walk over to the stockyards and packing plants. If the location of the two were changed it would require them to walk a little further. The only thing which would affect the retail trade on Illinois Avenue would be a change of transportation lines because otherwise the employees, above referred to, would pass the same points they now do. If the stockyards were moved to the west side of the packing plants some of the employees above mentioned would approach it by automobile over thoroughfares other than Illinois Avenue as some of them do now, but I am speaking of those who travel by street car lines (T. 81). If the stockyards were moved to the west side of the packing plants the people who ride the street cars now would continue to do so, and the only difference would be an increase in the difference they would have to walk.

I remember when the Exchange Building was at Missouri Avenue. It burned the year before I became a resident of South St. Joseph. I attended the dedication of the present Exchange Building. I am also familiar with the change in conditions that was brought about by changing the location of the Exchange Building. Before the Exchange Building was erected on Illinois Avenue (T. 82) that street had no business at all. It was a mudhole and swamp. The business that centered around the stockyards was at Missouri Avenue, right near the old Exchange Building, and when that building burned the business in that neighborhood moved to Illinois Avenue and that was partially due to respondent cutting off the west end of Missouri Avenue for egress and ingress from west Missouri Avenue to the territory back of the railroad tracks.

I think the value of 95¢ per square foot at which I have appraised the Transit House site is the value of land on that part of Illinois Avenue. If the stockyards were moved [fol. 316] to the west side of the packing plants many elements would enter into the question whether land along that portion of Illinois Avenue which lies between the packing plants and the Belt Railroad would be worth 95¢ per square foot. If respondent treated Illinois Avenue as it

did Missouri Avenue the value of that land would be about the same as land along Missouri Avenue, but if they left it open as the main entrance like it is today, then the change would not affect the value (T. 84).

Redirect examination:

I said in Government Exhibit 4-D that I was unable to find tracts of land containing approximately 500 acres within the city limits of St. Joseph and similar to the stockyards property. Respondent uses only about 90 acres of its land for pens, alleys, streets, Exchange Building, etc., and there is nothing in my report (Government Exhibit 4-D) which shows that I could not find 90 acres of land similar to the stockyards.

The businesses I spoke of on Missouri Avenue were mostly eating houses and saloons (T. 85). That was about the years 1898 and 1899. Since 1899 there have been changes in South St. Joseph other than the erection of the new Exchange Building. All of the development that is there now has been made since that time. There wasn't a paved street or a sewer, there was only a make-shift street car line which ran from 6th Avenue at Atchison down over the Rock Island tracks. This was a stub line for the stockyards. Later in about 1900 or 1901 they extended the car line past the stockyards to the lake. For a number of years that was a one-car affair running every half hour. King Hill Avenue was paved in 1901, I think. That furnished the first decent roadway to the stockyards. At that time [fol. 317] the stockyards district in South St. Joseph was not a part of the City of St. Joseph but was called St. George. Missouri Avenue had only one or two dry-goods and clothing stores, about three drug stores, one school and one church. There was a population of less than 2500 people. There were no city conveniences of any kind until about 1900. In 1899 there were no automobiles in St. Joseph that I know of (T. 86). Now trolley cars run from South St. Joseph to the downtown section of St. Joseph about every seven minutes, I believe. That schedule is maintained from five o'clock in the morning until after midnight. After midnight there is a half-hour service which continues until five o'clock the next morning. The trolley cars turn on Illinois Avenue at the junction about half a block east of the Transit House. The point at which pas-

sengers destined to the stockyards and packing plants will leave the trolley cars depends upon what part of the stockyards they wish to visit. If it be the sheep yards they leave at Lake and Missouri Avenue, but if they are going to the packing houses or the Exchange Building they would leave the cars at Cherokee Street and Illinois Avenue (T. 87). Many people leave the cars at the latter point. The car stop is about 200 feet from the Transit House.

Witness was asked the following question by counsel for the Government: "Well, I will ask you now, Mr. Mack, if in fact, your estimate of 20¢ a square foot contemplates the packing plants and railroads down at South St. Joseph all wiped out?" to which question counsel for respondent objected on the ground that it was improper redirect examination. The objection being overruled by the Examiner, the witness replied as follows: "I considered that the packing houses and the Exchange Building and the pens and the sewers and everything was wiped out, that the Belt Rail- [fol. 318] road was gone, but the Terminal and the Burlington was still there (T. 90)." "Q. Now, if you consider the packing plants, the Belt Railroad there, if just the stockyard pens and the Exchange Building were wiped out, what is your idea of the value?" A. "It would be 20¢ a foot, because the relationship between the stockyards and the packing houses, one to the other, would make it the same, if one is gone or both gone."

Recross-examination:

Whether the destruction by fire of the stockyard structures would effect the value of the land upon which they are located would depend entirely on the action taken by respondent with respect to rebuilding on that site (T. 91). My valuation of 20¢ a square foot is not necessarily based upon the thought that if the stockyards were abandoned the packing houses would have to be also. If the stockyards were suddenly destroyed but the packing plants left ready to operate and the St. Joseph Belt Railroad remained as at present connected up with the other railroads and livestock was coming rolling in there would be some confusion, but I do not know what would happen. There was a public livestock market at St. Joseph before the packers came but I would not compare it with the present market, nor would I compare it with a market that some individual might build;

that is, not for a good many years. If we were to lose that stockyards today the wolves of Omaha and Kansas City would be grabbing our business here before we could build a stockyards and there would be nothing left except the immediate territory here that could be accommodated with a much smaller yard. In such event Kansas City and Omaha would not take all the business but they would take a large percentage of it (T. 92). I do not know what effect [fol. 319] that would have on the packing plants and the St. Joseph Belt Railroad. There is a great deal of livestock that comes to this market that the packing houses do not use. It is shipped away from here now. If the packing plants don't increase their present capacity there might be enough livestock left to supply them, but the market would not be anything like it is today. Neither would the City of St. Joseph. If the stockyards were wiped out and the packing plants still operating they would have to use some of the land to build holding pens for the livestock which they continued to handle (T. 93). I suppose the packing plants now have their own pens to handle the livestock they buy. If there were no stockyards and the packing plants were able to use all the livestock which is now coming to respondent's stockyards, they probably would have to enlarge their present pens, they would not occupy the same territory which respondent now occupies with its stockyards. That is a matter of conjecture. There is plenty of territory to use. I do not know whether Armour would use the present pens or not. There are ten acres of land lying south of Armour's plant and there is a piece west of Packers Avenue that Swift & Company may use. The whole thing is a matter of conjecture. Whether the building of such pens by Swift & Company and Armour & Company would have any effect on the land value of 20¢ per square foot would depend entirely upon Mr. Swift and Mr. Armour (T. 94).

The present site of the stockyards is an ideal location for that purpose. If the structures now on it were destroyed the question as to whether it would have the value found in Government Exhibit 4-D would depend entirely on the individuals. It is my experience in real estate business that values are fixed largely by the customer who wants to purchase attractive land. In other words, attractive land may be worth 35¢ a foot to me and it might not

be worth over 15¢ to you, or vice versa. I have no opinion [fol. 320] as to the value in that event as I do not know who the buyer would be. I said that if the present stockyards were wiped out but the packing plants and the Belt Railroad remained I believe the land now occupied by the stockyards would be an excellent site for a new one. I said that in connection with Swift & Company controlling the stockyards. If some other independent packer came in he might have an entirely different idea of the value. I am forming my opinion of 35¢ per square foot as it is now owned, but if it were wiped out and Mr. Armour or Mr. Dold or some other man would come in here it would be worth whatever he thought it was worth and not what I thought it was worth (T. 95). Under these circumstances I do not know what it would be worth because if a calamity of that kind would happen it would depend entirely on how long it would be before the stockyards could be rebuilt after the land had been repurchased. It has taken 30 years to develop this market under favorable conditions without any such calamity. If a calamity of that kind would happen we do not know what it would be worth. My value of 20¢ is not based on any calamity. I am not assuming a calamity at all, I am assuming that there never was a stockyards there, in which event the land would be worth 20¢ a square foot with the present conditions as existing on the east side of the railroad tracks (T. 96). There is a property adjacent to the north side of the present stockyards. That property never had a stockyard on it but is nearly as well situated as the land occupied by the stockyards. Divided into small tracts it could be used for small industries. I don't believe that I considered whether or not there had been a stockyards at South St. Joseph. The question asked me was what would the land be worth for any purpose other than a stockyards. As I explained on direct testimony I [fol. 321] took into consideration that I could not conceive of any industry that would come to St. Joseph that would be large enough to use the tract in its entirety. Consequently, it would have to be cut into smaller tracts and to cut it into such tracts would be very expensive on account of the accessibility being at Illinois and Missouri Avenues. The tremendous expense of making these changes caused me to arrive at a fair value of 20¢ a square foot for any other purposes than stockyards (T. 97-98). As to tracts

A, B, B-1 and C of respondent's land which is occupied by pens its present use is absolutely the highest and best use to which it could be put. These tracts include part of the Belt Railroad and contain 109.17 acres. All of that land is not actually occupied by pens. It includes the tracts leased by the Serum Company and also the Davis & O'Connell feed lots. If the stockyards were moved to a new location there would be required an area greater than that merely occupied by pens (T. 99). Naturally the related industry would move with the stockyards.

Whereupon the witness was excused (T. 100).

Respondent's Facilities and Services

JAMES CHRISTENSEN, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

My name is James Christensen; residence, Denver, Colorado. I am employed as Field Assistant to the Chief, Packers and Stockyards Division, United States Bureau of Animal Industry. I have been in the Government employ in similar positions since the fall of 1918. My duties are the doing of general outside field work for the division. At the present time I am specializing on the investigation and [fol. 322] description of stockyards facilities and services and the lands and properties owned by stockyard companies who are under the jurisdiction of the Packers and Stockyards Act.

Prior to entering the Government service in 1918 I was employed in railroad service in various official capacities as specialist in the handling of livestock. I was so employed by two southwestern trunk line railroad systems for approximately 25 years. During the last six years of that period I was supervisor of a freight handling bureau, the function of which was to improve methods of handling livestock and freight and of the operation of stockyards (T. 101). I was railroad freight claim agent for a great many years having personal responsibility for all payments of losses, damages and overcharges concerning freight rates on livestock. In fact I was responsible for all traffic claims and for the final result in the event that I failed to

make a settlement with the claimant. In these capacities I was first employed at St. Joseph, Missouri, for the Burlington Line in the freight department for about two years. Subsequent to that I was employed by the M. K. & T. Railroad in various capacities. First as a stenographer while I was young, and following that as private secretary, freight rate clerk, special claim adjuster and finally freight claim agent for that railroad and other railroads. During the last six years of my railroad experience I was with the Texas & Pacific Railroad at Dallas, Texas. In the investigation of freight claims for delay or improper handling of livestock in transit naturally the services of the terminal facilities were involved and in cases where the claim was caused by physical injury to the animals we had to investigate for the purpose of determining whether the service prior and subsequent to rail transportation was partly or [fol. 323] entirely responsible for the injury. Also, in case of claim for excess shrinkage (T. 102) or decline in marketing conditions owing to delay I naturally was obliged to analyze stockyard services, market conditions and methods of handling and marketing livestock at the public stockyards. I have been reasonably familiar with the principal stockyards in this country for 30 or 35 years. I have been familiar with the details of respondent's stockyards for about two years. I started my survey here in the summer of 1927. Prior to that time I was generally familiar with respondent's stockyards but not from personal observation, though I had visited this yard occasionally 15 or 16 years ago (T. 103). My special investigation was conducted at respondent's stockyards for the purpose of describing for rate making purposes lands and properties used and the services furnished by respondent.

I came into the Government service under the old Bureau of Markets, now the Bureau of Agricultural Economics as a specialist in marketing livestock and meats. That was in 1918. I did not assume the duties of that position (T. 104) because about that time the war-time stockyards supervision was inaugurated and I was appointed livestock market supervisor in the same bureau. I became supervisor at a group of markets in the northwest, including Portland, Seattle and Spokane. That was a war-time activity and when it was abolished I went back to the Bureau of Markets (T. 104-a) and was assigned to a national survey of the retail meat business. I continued in that activity

until I became a member of the Packers and Stockyards Division.

I began my investigation of respondent's stockyards in the month of August, 1927. I came to St. Joseph at that time and remained on the stockyards a little over a month. The aggregate time I have spent on the stockyards in mak- [fols. 324-331] ing this investigation is about two months. I observed personally the facilities I have described. I made a very personal observation of the facilities and the land and the methods of handling livestock. I was conducted over the yards the first time by Mr. Black, superintendent of the yards, and subsequently I was with various employees or other people whose business is on the stockyards. The sources other than personal observation from which I obtained the information (T. 105) were explanations made to me by stockyard employees and officials, market agencies, dealers, livestock market supervisors and various other accredited persons who are familiar with stockyard operations at the St. Joseph market. Most of the information I have used in compiling operating tables was furnished me through the auditors of the Packers and Stockyards Division. I would tell them what information I wanted and they would compile it from the stockyards records. The first auditor in charge of this part of the work was Mr. Westinghouse. Subsequently it has been Mr. Bufkin. There were other auditors engaged upon the work, one of whom was Mr. Muse. All of the auditors were working under the chief accountant of the Packers and Stockyards Division. In determining the measurements and areas I obtained a map when I first came to the stockyards. I do not recall who furnished it, possibly Mr. Henrici (T. 106).

[fol. 332] Transit House

Referring particularly to the item on page 94 of Government Exhibit 5-C, designated "Hotel Transit House," the only other stockyards at which hotels are owned and operated by the stockyard company, as I now recall, are at Chicago and St. Louis. I have not been to the Pittsburgh Stockyards (T. 125).

[fols. 333–340] Counsel for the Government stated that he was informed that the stockyards at Pittsburgh and at Lancaster, Pa., maintain hotels (T. 125-126). Thereupon the witness continued:

There is no hotel at the Sioux City, Omaha, Kansas City, or Denver stockyards. I would estimate that the stockyard at Sioux City is practically the same, or possibly a little greater, distance from the main hotel district of the city as is respondent's stockyard, and that the same situation applies at Omaha (T. 126). With respect to Kansas City there may be a number of little hotels in the neighborhood of the stockyard district. I do not know as to that, but the distance from the stockyard to the uptown hotel district is practically the same, possibly a little bit less than at St. Joseph.

Cross-examination:

I have never operated a public stockyards except in a general way, having more or less supervision over the methods of operating railroad stockyards, which I have discussed in my direct testimony with respect to my employment by various railroad companies. I have never been on the pay roll of a public stockyard, except at the time I was connected with the M. K. & T. R. R. Co., which operated a public stockyard at Forth Worth, known as the Hodge yards. I did not operate that stockyard. I was not the superintendent, but I had more or less to do with determining its operating policy (T. 127) with respect to its physical operation. That is not the same as the yard now known as the Fort Worth yards. It was closed a great many years ago.

[fol. 341] Mr. F. W. Mollin, a witness called by the Government, being duly sworn testified in substance as follows:

Since April 1, 1929, I have been Secretary of the American National Livestock Association with headquarters at Denver, Colorado. For 9 months prior thereto, I was employed by a committee of bankers liquidating a ranch property in Nebraska. This ranch had been a large cattle outfit but at the time I was with them they handled only hogs.

For over 22 years prior to that I was with the Kent-Burke Company a large cattle feeder in the State of Nebraska, who also handled hogs. I held with the Kent-Burke Company almost every position from office boy up

(T. 143) and for the last several years of my service with [fols. 342–346] them, I was Treasurer of the company. The last two years following Mr. Burke's death, I was General Manager. As Treasurer and General Manager I was in full charge of the finances of the company and in addition we handled considerable private financing for members of the Kent and Burke families, in the way of mortgage loans and investments of various kinds. In respect to my experience in the actual marketing of livestock, I lived in Omaha, Nebraska, from 1912 to 1928, and I made it a point to go to the stockyards practically every day that the Kent-Burke Company had a shipment of cattle or hogs on that market. In addition to that I made trips to Chicago once or twice a year and an occasional trip to Denver, more particularly during the last two years I was with the Kent-Burke Company when I was in charge of their cattle buying operations. The Kent-Burke Company's shipments varied between Omaha and Chicago depending upon the market conditions but on an average they shipped about 3500 cattle a year and about 4500 hogs (T. 144). All of that livestock was not shipped to terminal markets. In the last few years the hogs went quite often to Fremont, Nebraska. We have shipped hogs to Missouri Valley, and to Valley, Nebraska, also occasionally to Grand Island, Nebraska. When I was with the Peterson Company at Norfolk, Nebraska, we sold hogs too directly to Armour and Company. During the last 7 years I was with the Kent-Burke Company they developed a cattle selling business, selling cattle to the neighboring farmers, and that business grew from nothing in 1921, when it started, to 3700 or 3800 cattle the last year I was with them. Most of them were bought on the Denver market and brought down to Genoa and Silver Creek, Nebraska, and sold to neighbors at those points (T. 145).

[fol. 347] Stock Yard Hotels

I could not say that I know the attitude of livestock shippers with reference to the necessity or desirability of a hotel being maintained in or adjacent to the stockyards. I remember that years ago there used to be some criticism of the Omaha stockyard because there was no very desirable place near the yards at which to stop, but I do not see how the providing of such a hotel could be considered a

stockyard service. It was a good many years ago when I heard the Omaha stockyard criticised in this respect and [fols. 348–377] there may be a better place there now, I do not know whether there is or not (T. 155). A good many shippers accompanying their livestock to market, particularly the small shippers—they make a kind of holiday of it. The big shippers go occasionally, of course. Where they have headquarters in the city where the stockyard is located, they naturally are on the market more than if they have headquarters in the country. I am much more familiar with the situation at Omaha than any other place, but I think that a great many shipments from our territory, which was over 100 miles out of Omaha, arrived there around midnight.

[fol. 378] Reproduction New and Less Depreciation

Mr. Hermann C. Henrici, a witness called by the Government, being first duly sworn (T. 226), testified in substance as follows:

Direct examination:

I am chief valuation engineer, Packers and Stockyards Division, Bureau of Animal Industry, United States Department of Agriculture. The duties of that position are to supervise the inventory and appraisal of stockyard [fol. 379] properties under the Packers and Stockyards Act of 1921. I am a graduate of the Manual Training School of Kansas City, Mo., class of 1922, completing the courses of steam and electricity; also a graduate of the Massachusetts Institute of Technology, class of 1906. I have been associated with the engineering department of Armour & Company; have been in the manufacturing and construction business (T. 229); am now associated with the firm of Henrici-Lowry Engineering Company, Kansas City, Missouri, as consulting engineer; have designed and supervised the construction of various utility properties; have had charge of the appraisal of public utility properties throughout the States of Missouri, Kansas, Oklahoma, Idaho, Colorado, Arkansas, New Mexico and Texas; and also as engineer for the Government have made appraisals of the stockyards at Peoria, Ill., Nashville, Tenn.,

Chicago, St. Paul, Denver, Kansas City, St. Louis, Fort Wayne, Pittsburgh and St. Joseph (T. 230).

The first appraisal of respondent's property was completed about August, 1927, and in September, 1929, that appraisal was brought up to date as of June 30, 1929. The general method employed in making that appraisal was as follows: We obtained from Mr. Kosters, respondent's chief engineer, copies of all tracings and drawings which respondent had of its property. These blue prints, copies of which have been introduced in evidence, were taken into the field and there checked from actual measurements of the property. Wherever there were no drawings, sketches and measurements were made. From that field work calculations were made as to the quantities of material and per cent condition of the property noted by the various engineers and checked by the chief valuation engineer. The vouchers for the purchase of materials were transcribed at [fol. 380] my request by the auditors. Respondent's payrolls were also transcribed and analyzed. The schedule of union labor wages was obtained from the various labor organizations in St. Joseph. Letters were written to various material dealers and contractors and manufacturers to obtain prices of material and labor (T. 231). Labor formulae were calculated based upon the labor conditions found in St. Joseph and the union scale of wages was applied to such formulae and compared with such contract prices as were obtained. These unit prices were then applied against the quantities and extensions made and embodied in the report included in this record as exhibits. All of that work was done under my immediate supervision and I have checked and compared and analyzed it. The papers which have been marked for identification Government Exhibits 4-E to 4-K, both inclusive, are the inventories and appraisals and other papers to which I have referred. They do not constitute all of the papers to which I have referred; the others are certain drawings contained in six envelopes introduced in the record as Government Exhibit 4-C.

Thereupon the Government offered in evidence as Government Exhibits 4-C and 4-E to 4-K, both inclusive, the papers as to which the witness has testified (T. 232). Counsel for respondent objected on the ground that the Secretary of Agriculture is not authorized to make an appraisal

of respondent's property and counsel for the Government called attention to his understanding that it had been agreed that the similar objection theretofore made (see transcript pages 39 and 40) applied throughout the proceeding to evidence respecting items of valuation and the Examiner stated that that was also his understanding and that he further understood that the objection would be considered as overruled and an exception taken. Further and [fol. 381] particular objection was made by counsel for the respondent to Exhibit 4-K (an analysis of stockyard wages) on the ground that it was immaterial and irrelevant in that the witness had used in his appraisal the union wage scale rather than the stockyard scale. The objections were overruled by the Examiner and all of the exhibits received in evidence (T. 233). Whereupon counsel for respondent suggested that Government Exhibit 4-K was not in harmony with the spirit of the agreement reached by counsel respecting Government Exhibit No. 10 (the agreement of engineers as to appraisal). Accordingly, counsel for the Government withdrew Exhibit 4-K for the time being (T. 235).

Condition Per Cent

The condition per cent shown in the column headed "Government Exhibit 4-I" on pages 2 and 3 of Government Exhibit 10 was obtained by an inspection of the property [fol. 382] in the process of making an inventory, and at the conclusion the engineer making that appraisal set down his opinion as to the per cent condition. Those per cent conditions after being inspected by the chief valuation engineer were discussed with the engineers making them and the final per cent condition determined. The third column entitled "Revised Government Percentage Conditions" was determined on December 2 and 3, 1929, during this hearing. Due to the difference of opinion between Mr. Kosters, whose figures are set down in the column headed "St. Yds." and the figures appearing in the column entitled "Government Exhibit 4-I," Mr. Schramm and Mr. Galbreath, two government engineers working at my direction and independently of each other in so far as any knowledge of the previous figures or the figures of each other were concerned, re-inspected these properties. The result of the inspection and of each of those men's independent judg-

ment is shown in Government Exhibit 10-A on pages 5 and 6 and the revised government figure (Government Exhibit 10, pages 2 and 3) was determined by taking either the average of Mr. Galbreath's and Mr. Schramm's opinions or the highest percentage if the percentage shown in the column headed "Government Exhibit 4-I" was higher than the opinion of Mr. Galbreath or Mr. Schramm (T. 236). In other words, wherever the original per cent condition was higher than either of those determined by Mr. Galbreath and Mr. Schramm, the original figure was included in the column headed "Revised Government."

In arriving at the condition per cent as expressed either in Government Exhibit 4-I or in the revised government figures, we considered the so-called life and age method of ascertaining actual depreciation only in so far as it was apparent from an inspection of the property. That is to say, when I examine two buildings, one of which had just been [fols. 383 & 384] completed and the other was built fifty years ago, I am not interested as to the exact date when the buildings were completed, nor am I particularly interested in the exact number of years they have been built, but from an inspection of the buildings it is quite apparent that one is older than the other, and in so far as such an inspection reflects the age of the property, and only to that extent, I consider the age in determining condition per cent (T. 237).

[fol. 385] Audit of Respondent's Records

It was agreed that the paper entitled "Report of Audit for Period January 1, 1928 to June 30, 1929" which has been marked for identification "Government Exhibit 11" was prepared by auditors for the government and checked with auditors for respondent, that it clearly reflects respondent's books for the period which it purports to cover and that it is in proper commercial form. The respective counsel also agreed that $70,000 is the correct and proper amount to allow respondent as working capital (T. 243). In this connection counsel for the Government stated that he did not wish it to be understood that the Government concedes that the operating expenses and net operating income shown in the exhibit constitute the proper amounts of those items for rate making purposes and counsel for respondent stated that while the respondent

contends that the exhibit does show the proper net income for rate making purposes, the right of the government to the position is recognized.

H. E. BUFKIN, a witness called by the Government, being first duly sworn, testified in substance as follows:

I reside at Omaha, Nebr., and have for a little over five years been field auditor for the Packers and Stockyards Division, United States Department of Agriculture (T. 244). I had 12 years' actual experience as an auditor with [fol. 386] two railroads prior to entering the Government service. I completed a course in public accounting with the International Accounting Society of Chicago, Ill. For 6 of the 12 years I was with the railroad companies I was senior accountant. In that position I had charge of general accounts and supervised the accounting force of the Galveston, Houston & Henderson R. R. Co., which is a joint line with the Missouri, Kansas & Texas, and the International Great Northern at Galveston. I went immediately from that work into Government service. My duties in my present employment are auditing the accounts and records of stockyard companies, commission men, and dealers for the Department of Agriculture. I have been most recently engaged in that work at St. Joseph and am familiar with Government Exhibit 11 (T. 245). Under the direction of Mr. Bachmann I supervised the making of that audit. I was engaged in that work 10 weeks, during which time I was located at St. Joseph. I was assisted by accountants Hart, Baughman, and Muse, who were working under my immediate supervision.

I prepared the first two sheets of the document marked for identification Government Exhibit 12 (T. 246).

Thereupon counsel for the Government and respondent agreed that the information contained on the first two pages of Government Exhibit 12 is included in Government Exhibit 11; that the respondent's net profit for the year 1928, as shown on its books, is $252,282.66, and for the first half of 1929, $117,556.81; and that the deductions and additions made by the witness Bufkin, as shown on the first two pages of Government Exhibit 12, have been agreed to

by respondent's auditor as being proper additions and deductions for the purposes of this proceeding.

There being no cross-examination, this concluded the testimony of the witness, and he was excused (T. 247-8).

[fol. 387] JOHN J. BACHMANN, a witness called by the Government, being first duly sworn, testified in substance as follows:

I reside in Washington, D. C., and since January 7, 1929, have been in charge of Audits and Accounts, Packers and Stockyards Division, Bureau of Animal Industry, Department of Agriculture . I have been an auditor since the year 1916. I graduated from St. Thomas College of St. Paul, Minn., in 1915; graduate work for one year thereafter in philosophy and medicine, and one year in law, and two years in accounting. I taught elementary, advanced, and specialized and cost accounting, business finance, and other business subjects for six years in three different schools in St. Paul and Minneapolis. Two of those years were at the Bishop Brissman School of Accountancy at St. Paul. During a half year I was dean of the American Institute of Commerce, which is a Walton School in Minneapolis, and a year and six months I was at St. Thomas College, St. Paul.

As to practical training I spent six months with the St. Paul Gas Light Co. as a clerk in the accounting department, and a year and a half as assistant to the chief accountant of the St. Paul Water Department (T. 249). For approximately a year in 1919 I was practicing public accounting. From 1920 to 1924 I was employed as public accountant by Bishop, Brissman & Co., certified public accountants at St. Paul. In 1924 I resumed the practice of public accountancy for myself and so remained until I took my present position with the Government.

During the course of my public accounting practice, both with Bishop, Brissman & Co. and for myself, I have worked on and supervised audits of the Bank of North Dakota, at Bismarck, the Home Building Association of the State of [fol. 388] North Dakota, the State Mill at Grand Forks, N. Dak., the city of Eveleth, and the water department of that city, the city of St. Cloud, Minn., and its water depart-

ment, the Mayo Clinic at Rochester, Minn., the Kahler Corp., at Rochester, Minn., and a number of large and small firms in St. Paul and Minneapolis; as well as the Central Lumber & Coal Co. of Dubuque, Iowa, the Brictsom Tire & Mfg. Co., Omaha, Nebr., and the United Packing Co., South St. Paul. I also acted as public accountant to the city council; made an audit of the State of Minnesota for eight years, and acted in an advisory capacity to the Minnesota Securities Commission.

In connection with my private practice I did considerable regular commercial accounting work (T. 250). I also have had experience in connection with utility rate cases. I have made surveys of statements submitted by public utilities to determine whether or not the amount of securities that they issued was in harmony with the worth of their property, and also whether their rates were adequate or inadequate. I engaged especially in this work in respect to the rates of street car, telephone, gas and light companies in my capacity as public accountant of the city of St. Paul and as advisory accountant to the Common Council. I have never been employed by one of the utilities.

I have the degree of Certified Public Accountant from the State of Minnesota, and also a college degree of Bachelor of Science in Commerce.

My duties with the Department of Agriculture consist of supervision of field accountants and making audits for rate purposes, also trade practice audits and those usually made to bring up to date information on all stockyards, also the gathering and drawing up of statistics relative to stockyards, packers, commission men, dealers, and brokers [fol. 389] (T. 251). Since I have been in the Department of Agriculture I have assisted on some audits, particularly those at Denver, St. Joseph, and Nashville. Also I have made trips into the field to assist accountants in beginning audits. I spent approximately two weeks at St. Joseph in connection with the preparation of Government Exhibit 11, and since its completion have spent nearly two weeks analyzing it. I have a very general knowledge of respondent's books (T. 252). I am familiar with Government Exhibit 12, the first two pages of which were prepared by Mr. Bufkin, and the remainder, except pages 10 to 13, both inclusive, by me. Those pages, which constitute the

schedule of depreciation, were prepared principally by Mr. Henrici and his office force. They gave me the reproduction new values of respondent's structures and equipment, the life thereof in years, the annual rate of depreciation. and a scale of the depreciation by the straight line method. Those calculations were checked and rechecked by Mr. Bufkin and me. I do not think those pages reflect any of the changes shown in the stipulation between Mr. Henrici and Mr. Kosters. Relative to that, let me say that the whole report (Govt. Ex. 12) is subject to modification by reason of certain changes which have been made since this hearing began, in so far as they relate to the appraisal of respondent's property. As far as I was concerned this was more or less in tentative form, and there are some changes that I will mention as I go through it (T. 253).

Net Operating Income

Referring to page 3 of Government Exhibit 12, the net profit per audit is stated as $252,929.09. To this amount are to be added all of the items under the head of "Additions" and from the new total are to be deducted all of the items headed "Deductions," giving the net operating income as $355,921.81.

[fol. 390] The first item under "Additions" is "Casualty Insurance Refund, $9,799.43." On examining the surplus account of the respondent as shown in Exhibit D-B (page 5), of Government Exhibit 11, we found that respondent had received refunds on dividends on casualty insurance each year for the years 1920 to 1929. We came to the conclusion that this was not an extraordinary item but a continually recurring one and in the nature of a credit to the casualty insurance expense. That is to say, respondent paid the gross amount of casualty insurance and when, later in the year, the insurance company computed the rate to be effective for that year, there was a return of the difference between the original amount paid and the amount finally found actually to be due. This credit should go against the expense account rather than to the surplus account.

The next item, "Elimination Depreciation—$65,035.80" is supported by the schedule contained on pages 9 to 13, both inclusive, of Government Exhibit 12 (T. 254). We

took the straight line depreciation computation made by Mr. Henrici with its total of $117,229.00 as shown on page 13 (Government Exhibit 12) and reduced that on a 6% basis to a sinking fund, computing a separate sinking fund on each and every asset which respondent owned. So reduced we found a total of $55,450.00, which figure appears in the first column on page 9 (Government Exhibit 12). Computed on a composite life at 6% annual sinking fund basis, the comparable figure would be $52,812. The figure of $55,450 includes both used and useful as well as unused and unuseful property. The difference between the two figures ($55,450 and $52,812) arises by reason of the fact that the former is the aggregate of the sinking funds determined for each separate item of respondent's property, whereas the latter is computed upon that property as a composite whole.

[fol. 391] After ascertaining the figure $55,450, I eliminated depreciation on the property classified by Mr. Christensen as outside. The resultant figure was approximately $51,000 to which I added an arbitrary amount of $12,000 as a cushion so that if there should be any loss because of non-investment of whatever money might be put into the sinking fund, or for any other lapses, there would still be no doubt that the depreciation allowed would, when invested at 6%, over the period of time determined, be sufficient to replace respondent's assets after they come to the end of their service life (T. 255). As I see it there are certain changes to be made in this schedule. For simplification I use a 6% basis computed annually. I feel that the rate should be changed to about 6 3/7% computed on a semi-annual basis. The reason for the 6 3/7% is that when we analyze respondent's balance sheet (Exhibit A of Government Exhibit 11), we find that the company had invested in all assets $6,811,770.13. That is the total asset figure, plus the amount shown, put under fixed assets as reserve for depreciation of buildings, improvements, equipment, furniture and fixtures. Then I eliminated from what I considered the assets essential to the respondent's operation, the amount of investment that had been provided by the mortgage bonds, by the actual capital stock, by the surplus and undivided profit and by the current liabilities. The remainder was the amount of assets equal to the re-

serve for depreciation on the buildings, improvements, equipment, furniture and fixtures, showing that the respondent had invested these funds in certain of their assets which I assume to be first those which were least necessary to their operations; that is to say—in the St. Joseph's Belt Railroad and in loans to affiliated companies. I computed that amount at approximately $600,000 (T. 256), and assumed further that the remainder of the $1,400,000 set [fol. 392] aside for depreciation was invested in essential assets. I also assumed a rate of return of 5% in the investment in the St. Joseph Belt Railroad Company and a return on the remainder equal to that which is to be allowed respondent as a fair rate of return. I did not know at that time what the latter figure would be but later I assumed it to be 7½%. Therefore I calculated 6/14 of the 5% return on the investment in the Belt Railroad and 8/14 of the 7½% return on the remainder resulting in a rate for the investment of the sinking fund of 6 3/7%. As stated before I computed this on an annual basis. However, respondent provides for a monthly depreciation and strictly speaking the sinking fund should be computed on a monthly basis. However, I did not care to draw the computation that fine. It would be very difficult and tables are not available for it so I felt that the semi-annual basis was fair. The rate of 6 3/7% is based upon respondent's investing at 7½% that portion of the sinking fund which is invested in essential assets. As a result of these computations I found the proper amount to be included in the annual expense account for depreciation to be $63,000. There was an additional reason for that. Referring to page 14 of the Government Exhibit 12, there will be found a statement and comparison of repairs and depreciation for the year 1928 (T. 257). The sum of the two items is approximately $174,000. That is about 16% of the gross income. I did not have the files available but I checked over what information we had at St. Joseph to see how that compared with other stockyards and I find that in the case of Denver the comparable percentage is approximately 7, and at St. Paul although the amount of repairs and depreciation seems substantial, they were only 8 or 9 per cent of gross income. I felt, therefore, that an allowance of 17 per cent for re- [fol. 393] pairs and depreciation was excessive. The reason respondent charges such heavy depreciation is to some

extent reflected in the appraisal which apparently was made in 1922 or 1923. It will be noted that the depreciation allowance in the former year was $59,345 and in 1923 it was $120,000. In the latter year respondent began depreciating on an appreciated value, the result of which is, that the users of its facilities are putting into the company an amount equal to the depreciation on its unearned increment. I consider that unfair and feel that if respondent be allowed to continue charging off depreciation on approximately the basis it was using before the appraisal of 1922 it would be fair to respondent.

As yet I have not computed depreciation on the basis of 6 3/7 per cent computed semi-annually. That is the reason why I have shown on page 13 of Government Exhibit 12, the difference between the results of computations at various rates (T. 258). The fact that it is to be computed on a semi-annual basis will decrease further the sinking fund installments. What I have said does not imply at all that the prewar value of respondent's property should be used as a basis but costs of these assets were not available and we could not know what the depreciation on costs would be. However, I do not feel that respondent should be entitled to a rate on the present value less depreciation and also be entitled to a depreciation on an appreciated worth. I do not feel that they are entitled to it (T. 259).

"Mr. Rynder (Counsel for Respondent): I just wanted to get your position clear, that is, that in writing off our depreciation, we are not entitled to take as a base, the present-day value of property.

The Witness: Well, I wouldn't say that. However I do not feel——(break)

Mr. Rynder: I would like to know definitely about that."

[fol. 394] (Whereupon the question as heretofore recorded was read by the reporter.)

"The Witness: That is what influenced me to adopt this method, Mr. Rynder. I used that not as a sole and definite guide, but as a guide, it was one of the considerations why I adopted the sinking fund method.

Mr. Rynder: Well, but sinking fund method or otherwise have got to be worked on a certain value of the property, has it not? I certainly want to get that clear although I don't want to cross-examine on it (T. 259).

The Witness: It does have to be worked on a certain value, yes sir, and the value which I used Mr. Rynder was Mr. Henrici's reproduction less depreciation value, the value that he gave.

Mr. Rynder: Well, is that proper?

The Witness: Is that proper? Well, I do not know whether it is proper or not, but I would say the proper method is on cost, but we could not get that figure."

Assuming that a certain structure at the stockyards cost $100 to produce in 1916 and would cost $150 to reproduce in 1929 I think that the depreciation ought to be figured on the basis of the $100 and that respondent should put in the additional amount it takes to reproduce the item.

The $63,000 allowed for depreciation as shown at the bottom of page 9 of Government Exhibit 12 is not calculated upon the basis of 6 3/7 per cent compounded semi-annually (T. 260) but is computed on a 6 per cent annual basis and the facilities classified by Mr. Christensen as joint were considered as being used and useful for the purpose of the computation which arrived at this $63,000. And the basis on which that depreciation was calculated was the valuation given me by Mr. Henrici which I understand as being reproduction less depreciation. The $63,000 is a tentative figure subject to whatever the secretary considers as used [fol. 395] and useful and whether he thinks the rate should be changed to 6 3/7 per cent or the computation changed to a semi-annual basis. The stipulation which has been entered into by the engineers will affect the amount of this depreciation allowance (T. 261). The additions either by new items going into the appraisal or by change of condition per cent will naturally affect the base which Mr. Henrici gave me for computation of depreciation on a straight line basis, which is the base I used in computing the sinking fund method. Regardless of what these changes finally may be I can, from the information I have here and when the final figures are before me, ascertain the proper amount of depreciation.

There was another factor which caused me to use the sinking fund method of depreciation. It is not of primary importance, however, it led me to the conclusion that the sinking fund method was fair. The condition per cent as shown by Mr. Henrici's appraisal of 1927 was 76.3. His

appraisal of 1929 stated it as approximately 76. Mr. Kosters in 1929 found it to be approximately 85. In 1922 the American Appraisal Company appraised respondent's property and their condition per cent was either 83 or 87. Respondent has set up on its book for depreciation an amount equal to over 50 per cent of its depreciable assets, most of this having been set up since 1922 (T. 262). On examining the only asset of which I knew the date of acquisition or construction, namely, the Exchange Building, I felt that if the rate of depreciation which respondent is setting up on its books for that asset had been provided regularly from date of construction to 1929 the amount accumulated would be $60,000 in excess of even the reappraised value of that asset. As I saw it, respondent had deferred setting up on its books depreciation for a number of years and since 1922 it was covering each year some of that deferred de-
[fol. 396] preciation which should be turned back to the years in which it should originally have been set up. The appraisal by the American Appraisal Company to which I have referred was one made for respondent in the year 1922. The amount of $65,035.80 shown on page 3 of Government Exhibit 12 was arrived at by deducting from the depreciation of $128,035.80 set up on respondent's books for 1928 the $63,000 allowed as above described (T. 263).

In the course of the audit analyses of the plant account and repair account were made and I considered them in arriving at my conclusion as to depreciation. The depreciation allowance of $63,000 plus the repairs which were allowed in the full amount shown on respondent's books equal approximately Mr. Henrici's computation of straight line depreciation. That is to say the $63,000 depreciation allowance plus the repairs, $46,082, equals approximately $110,000, and Mr. Henrici's computation of annual depreciation allowance on the straight line basis was $117,000. Another thing we considered was the percentage of repairs and depreciation charges to total gross income. I felt that 10 per cent would represent a liberal allowance.

The items earmarked on page 3 of Government Exhibit 12 "O. R. E." which stands for Outside Real Estate (T. 264) are according to the same classification on respondent's books. Those items are shown on schedules 30, page 97; 31, page 98; 32, page 99; 35, page 100; 34, page 101; and 35, page 102 of Government Exhibit No. 11. Being so set

up on respondent's books I, of course, eliminated them and if other of respondent's property be classed by the secretary as nonused or nonuseful or if some of these items be classed as used and useful, adjustments will follow of course.

On page 5 of Government Exhibit 12 is shown a detailed schedule relative to the item "Donation." This [fol. 397] amounts for the year 1928 to $1,485.72. Of this amount $155.47 is allowed and $1,330.25 is disallowed, which figure is shown on page 3 of Government Exhibit 12. The total donations shown on respondent's books for the first six months of 1929 are $1,071.00 of which $500.00 is allowed, $571.00 disallowed, in Government Exhibit No. 12. The question that came into my mind when I looked over these donations was whether or not any benefit would result from them to the users of respondent's facilities, and if so was there a real benefit or was it too remote. If it were too remote I feel that item should not be allowed (T. 265). A further question was who should pay the donation; should it be the users of the facilities or respondent's stockholders? I felt that the stockholders should pay unless there accrued to the users of the facilities a benefit from the donation. The 1928 donation of $145.47 to the Pig Club was allowed because I felt that anything which encourages sale of a commodity for which the company renders service should be allowed. The same reasoning applies to the donations to the Boys and Girls Club. I felt that the donation to the Good Roads Association was a real business getting expenditure in that if respondent encouraged the building of good roads it might increase the truck-in business to respondent's yard in preference possibly to some other yard (T. 266) and I felt that there was a benefit accruing to the users of the facilities in having good roads over which to come to this particular market.

It was my opinion that the item "Fiscal Agents, Trustees" was made in securing money to give the respondent's security holders the added protection of registration with a trustee and therefore was in the nature of additional bond or interest expense and as such should be charged against operating income which respondent will be allowed under a fair rate of return. The same reasoning applies to the item "Bank Exchange—$28.10." On page 6 of Gov-

[fol. 398] ernment Exhibit No. 12 is a schedule relative to the item "Miscellaneous Administration—$2,816.86" on page 3 of said exhibit. I challenged the item "$1,500 Proportion of Maintenance, Chicago Stockyards Company" because I did not know just exactly what kind of expense it was to cover. The same reasoning applies to this as to the donations. If the benefit was close enough to the users of respondent's facilities I allowed it. If the benefit was too remote it was disallowed. The item of $1,500 above referred to is set up in Government Exhibit No. 12 in the same form in which it appeared on respondent's books (T. 267).

The elimination on page 3 of Government Exhibit 12, "Taxes, R. E. and P. P., $13,873.78," is explained by schedule on page 7 of the same exhibit, which is a tentative and approximate computation subject to change as the Secretary may find certain properties of the respondent to be used and useful and may find the values of such properties. The computation on page 7 covers the year 1928. On page 8 is a similar computation for the first six months of 1929. In making the disallowances shown on pages 8 and 7, which resulted in the elimination appearing on pages 3 and 4, I followed Mr. Christensen's report. I did not go into fine details; I used approximate ratios. Information as to taxes paid was not set up on respondent's books so that it readily could be applied to the separate parcels of property. The basic information which enabled me to apportion the taxes to the various tracts was obtained from the county records (T. 268). Information bearing on these taxes will be found in schedule 90 on pages 172 to 179 of Government Exhibit 11.

The item "bond interest" appearing on page 3 of Government Exhibit 12 is a profit charge against the net operating income, which is to be allowed the company under [fol. 399] a fair rate of return. That is to say, respondent will be allowed a rate of return on the fair value of its property, and that value may be represented in its capitalization by bonds and stock. The interest on the bonds has the first claim against the income. The effect of this adjustment which I made has been to add that back into operating income.

I turn now to that portion of page 3 of Government Exhibit 12 which covers the "deductions." The first is "lease

income, $4,322.04." The total amount of such income, as shown by schedule 17 in Government Exhibit 11, was $4,658.04. I have eliminated all the income of that nature except that from the yard telephone booths (T. 269). It is my purpose in this to eliminate the income from items considered by Mr. Christensen as not used or useful. If the expense relative to those items is to be excluded, the income also should be. That elimination covers rent of right of way, sheep shed rentals, ground rent, house rent, stockyards industries, outside real estate industries, sale pavilions, and all the outside real estate income accounts (T. 270).

Mr. Bufkin eliminated the item "bad debts" (page 1 Govt. Ex. 12). I restored it, however, because it was a small item of only $94.23 and I believed it to be an ordinary expense which is incurred in the conduct of the business (T. 271). There is no schedule covering that in Government Exhibit 11. I would not under all circumstances allow bad debts as a charge against a business, but where it is a small amount and is incurred in the ordinary conduct of the business and is not in the nature of a loan, I think it should be allowed. If it were in the nature of a loan, I would not allow it, whether large or small. In that event it would be an extraordinary item, and the effect of allowing it in one year would be to charge it into the rate schedule for every [fol. 400] year (T. 272). I would eliminate extraordinary expenses. However, where such an expense might be incurred at irregular intervals, I would say the best way to handle it is to allow an annual charge in the nature of a reserve for contingencies (T. 273).

The item "rent of right of way" is eliminated from income for the same reason as the preceeding item, "lease income," because the railroad is classified as not being used and useful for stockyard purposes, and the income from it should be eliminated if the property itself is eliminated.

The item "interest received" means interest received on loans and is shown on page 103 of Government Exhibit 11. This item is deducted for the same reason that the interest paid is eliminated—namely, that any interest which respondent receives on securities would also follow after the net operating income (T. 274).

Page 4 of Government Exhibit 12 is of the same nature as page 3 but covers the first half of 1929 rather than the year 1928, and the same explanations apply to the various items. The computation on page 15 of Government Exhibit 12 was made for comparative purposes and to show respondent's dividend policy.

Analyses of respondent's plant account will be found in Government Exhibit 11 on pages 20-33, both included (T. 275). I stated that pages 21 and 22 contained information with reference to respondent's plant account, including the stockyard building and improvements. The period of time covered by that is from the date of the appraisal in 1922 to June 30, 1929. That part of the exhibit purports to be a reflection of the valuation of the various stockyard buildings and improvements, and additions and deductions that have been made to those asset accounts over that period of time. On that schedule the retirements are indicated by red [fols. 401-404] figures, and the additions by black figures. From that information it appears that since 1922 there have been net additions to the buildings and structures approximating in value $50,000. That appears on page 22. By net additions I mean the difference between additions and retirements. The total value of retirements during that period was approximately $16,500 (T. 276), and the total value of additions and betterments was approximately $66,000 to $67,000. I could not tell from respondent's records what its policy has been with reference to charging the plant account and charging the repair account when improvements or additions to property are made. However, I gathered the impression that items which may be considered in the nature of a replacement or betterment may be charged into a repair account, but such items could not be determined as replacements or betterments from the records of the company (T. 277). I simply could not tell which they were, but I found the repair account and the maintenance account listed in respondent's books. The basis of value used by respondent in writing off retired items of property is the appreciated worth as set up on its books by reason of the appraisal of 1922. In other words, when an item of property is retired, it is retired at the 1922 appraisal less whatever depreciation has been written off against it since that time (T. 278).

[fol. 405] Probable Receipts at River Markets; Effect of Divergent Rates at Those Markets; Advisability of Stockyards Hotels

CHARLES E. COLLINS, the witness called by the Government, being first duly sworn, testified in substance as follows:

For about 23 years I have resided in Kit Carson, Colo. I am engaged principally in the cattle business but I have a bank at Kit Carson. I raise cattle on my ranch of 40,000 acres about six miles west of Kit Carson. I run about 2,500 cattle annually. I run a cow herd and raise calves and sell them usually as yearlings (T. 479). During the last few years, since I have been on the yearling basis, I have been selling mostly direct to people in the corn belt country. I ship my cows, fat cows, and heifers to the public markets, usually Denver or Kansas City, but mostly Kansas City. In [fol. 406] the last two years I have started in on a feeding campaign and am now feeding about 300 calves. I have not made any shipments to St. Joseph for five or six years.

I belong to the American National Livestock Association and the Colorado Stockgrowers Association (T. 480). I am one of the vice presidents of the American National.

I have been in the catttle ranching business all my life.

I am president of the Kit Carson State Bank. I am also president of a little association in eastern Colorado called the Big Sandy Livestock Protective Organization.

As to whether or not the producers of range cattle desire the Secretary of Agriculture to investigate the rates and charges on the St. Joseph stockyards, I know the views of a few people with whom I am intimately acquainted. I have talked with a good many cattle men that I know in the West who think it is perfectly right that someone should have the right to look into these matters to see whether or not we are paying an unfair price for services. That was part of the claims that were made during the Packers and Stockyards (T. 481) legislation, that we felt that we ought to have some arbiter at public stockyards, to tell us whether we were getting a square deal or not. We had no other means of finding out. I presume that where the freight rates to various stockyards are the same and there was 5 or 10 cents a head difference in the market charges, it is barely possible

that a few people might, if they felt that they could get just as much at one market as another, try to save that difference but I don't believe it would make any material difference at all to enough people to have any effect on receipts at any particular market. A great many people have their ideas about different markets. I know some people go to one market that (T. 482) I am sure they would go to against [fol. 407] another if there wasn't any yardage at all. Someone just has an idea that he could get a little better price at one market than another. If they feel that way I don't believe they would be diverted by any small difference in yardage charge at all but there would be some people upon whom it might have some effect. I don't believe a difference in yardage rates of 5c a head would, under ordinary market conditions on the various stockyards, make a substantial difference in shipments.

The witness being questioned as to the probable future receipts of livestock at St. Joseph stated that he was not competent to say as to what portion of such receipts might come to St. Joseph. I have my views as to what would be the general receipts at all the markets up and down the river but as to the St. Joseph market alone I don't know as I would be. Whereupon the witness was requested to state his views as to the river markets generally. To this question counsel for respondent objected to (T. 484) on the ground of immateriality. The objection being overruled and exception noted, the witness answered as follows:

"As to all the public markets up and down the river, and east of the river, I feel that the market receipts are about at the peak. That is my feeling about the matter of cattle receipts at all these different stock markets, unless some of these newer stockyards in the West, there is a possibility in the next few years that they may grow, but I feel these river markets, eastern markets, have practically reached their peak in receipts."

I am speaking now of cattle receipts (T. 485). Such receipts may vary a little from year to year but I am speaking of the period of the next fixe or ten years. I feel that in the West in the next few years there will probably be some increase in the production of cattle but not very materially. The western country already has about all the cattle it can

[fol. 408] stand. I don't believe our cattle population will increase very much. I don't know as to whether cattle shipments to the river markets will decrease in the near future.

Stock Yard Hotel

I am not very well acquainted with the hotel in South St. Joseph known as the Transit House. I was there about twenty years ago. In a way I was acquainted with conditions at the St. Joseph stockyards at the time that hotel was built. I used to go to that market quite frequently with livestock years ago (T. 486). As I remember it years ago out there at the stockyards soon after they were established, it seems to me like it was very apparent that it was necessary to have a hotel out there at that time but I don't know anything about it in later years. The conditions that caused me to think it was necessary to have a hotel at that time were that it was far out of town. At that time I did not have as much business in town and I used to sit around the hotel at the stockyards a great deal among the people. I am not positive but I think there were street cars from South St. Joseph to St. Joseph in those days. I know they had hacks and cabs and that we used to drive up town. That was before automobiles became general. I do not accompany cattle to market nowadays (T. 487), not in the last fifteen years.

Charging Traders

It has always been a question in my mind about all these stockyards as to whether the total cost of maintaining the stockyards should be charged to the original shipper. I have always felt that other people using the stockyards ought to pay part of the necessary operating expenses; that the total expenses should not be charged to the original [fol. 409] shippers; and that the yard traders and other people using the stockyards should pay their proportion of the money necessary to maintain them (T. 489). I have heard a great many people say they think that ought to be done (T. 490).

Cross-examination:

If someone else had to pay some of this yardage the producer of livestock would not have to bear so much of it. People claim in the last analysis the producer would, but

I don't think he would. If some of the other fellows paid a third of it or a portion of it, the thing would adjust itself to the point where the producer would not be paying it all. By other fellows I mean the yard traders and people that use the yards for other purposes. If the yard trader would reduce his bid by the amount of the yardage it would not do any good (T. 490) if you were sure he did that. You would never be sure and the old saying is that "What you don't know don't hurt you." I don't think the trader would. I think in time it would adjust itself so he would buy the cattle just the same and take that part of the burden on himself and relieve the original shipper of a part of it. It is just a matter of fairness as to whether the original shipper would pay the whole expense or the other people that use the stockyards should help pay part of it. I don't know any place where this suggested system is being used but I have always thought it ought to be. Just felt that was a mistake the stockyards made by shouldering it all on to the original shipper. They just got started wrong.

I can remember very well in my early shipments of cattle to Kansas City when there were very few traders in the yard. About all the shipping that was done in those days was fat cattle bought from the original shipper and forwarded on to St. Louis from Chicago (T. 491). That was before the St. Joseph market opened. In the last 15 or 20 [fol. 410] years practically all of the stocker and feeder cattle are bought and handled by traders in the stockyards and they have the use of one-third or half of the stockyards. I have always felt the traders were pretty good sports and I don't believe they want to sponge anything off of anybody. If they had to pay their portion of it I don't believe they would kick about it. If the stockyards company had to have 35¢ a head to pay interest on their investment, or capital stock, or whatever it might be called, and the traders used one-third of the yards, one-third of the original shippers' fee should be cut off and put on the other fellow. In other words, when a trader buys stock that comes into a commission man's pen and moves it into his own pen, when the bill is made up on the sale of the livestock and the yardage is charged, instead of the 35¢ a head being paid by the seller of the livestock it would be divided in one-third or say 25¢ for the producer and 10 for the trader, or 15¢ for the trader and 20 for the producer. (T. 492). That would lighten

the burden on the original shippers. Of course if the trader was keen enough to do that for 15¢ a head he might add a cent or a cent and a half or something like that and I might be paying it, I don't know, but I think it would adjust itself. It would be just as high and there would not be any difference there. You would just divide the expenses between the people who use the stockyards. (T. 493). If I did not see it on my bill I would not know it was there. Cattle is all I know anything about. If there are any other people besides traders and speculators that get the use of the yards for nothing, my suggestion would apply to them. I do not know just who else gets the use of the stockyards for nothing. It might be the packer pays a little yardage once in a while if he comes there and uses it, but might be only a little. I would not have the packer pay yardage if he buys [fol. 411] livestock at the stockyards and then drives it over to his pens where he holds it long enough to run it into a packing plant for slaughter because he does not resell, but if he resells a charge should be made. My complaint is directed to the classes of people that resell on the market (T. 494).

[fol. 412] **Evidence Offered by Respondent**

Counsel for respondent then made the following statement. Heretofore respondent has made objections from time to time throughout the record to any testimony which tended to show the value of respondent's property, on the theory that the secretary (T. 284) did not have authority to determine the value of such, and has also objected to testimony which attempted to segregate, divide, cut off or deprive respondent of the right to earn on certain properties now owned by it. These objections were based upon the further ground that such procedure was not within the statutory authority of the Secretary of Agriculture. These objections, while made perhaps only at the beginning of the evidence were understood to continue throughout and apply to evidence of that character offered by the Government. These objections were overruled and exceptions noted. Without waiving the objections, respondent is now prepared to offer evidence upon the value of the property and also as to what property should be included as used and useful. In the event that the respondent's previous

objections be at any time sustained and the evidence offered by the Government be excluded, respondent would expect that the evidence which it offers in support of its value and as to its used and useful property should be likewise excluded. (T. 285).

Cost of Reproduction New and Less Depreciation

S. F. KOSTERS, a witness called by respondent, being first duly sworn, testified in substance as follows:

I reside in St. Joseph, Missouri, and am a civil engineer employed by the St. Joseph Stockyards Company, St. Joseph Belt Railroad Company, and the Union Terminal Rail- [fols. 413-420] road Company, as Chief Engineer. My elementary education was received in the grade schools of Chicago, Illinois; my academic education was finished at the Armour Institute of Technology of Chicago; my professional education was received in a four-year course in the University of Illinois, graduating in the year 1913. I then became for approximately a year construction engineer with the State Highway Commission of Illinois. After that, for a period of about six months, I was in the maintenance department of the Illinois Central Railroad Company, and then was transferred to the bridge and building department of the same railroad where I remained for about one year. In 1916 I was employed as chief engineer by a Chicago contracting firm (T. 286). Later I became superintendent of construction in charge of road and bridge work and still later was taken into the firm where I remained until I entered the army in the latter part of 1917. In the army I was assigned to duty as superintendent of construction in the Signal Corps on two aviation fields built on Long Island, New York. Later was transferred to the air service in which I remained until January, 1919. In the early part of that year I was sent by Swift and Company, Chicago, to assume my present position with the St. Joseph Stockyards Company. I am an associate member of the American Society of Civil Engineers. I have made numerous small appraisals of properties in connection with duties throughout my business career and since taking my present position have made appraisals of the St. Joseph Stockyards Company, St. Joseph Belt Railroad Company, The Union Terminal Railroad Company, and the Sioux City Railroad

Company. Also have testified in cases involving these appraisals both before the Interstate Commerce Commission and the Bureau of Finance. (T. 287). I have made an inventory and appraisal of the respondent's properties as of June 30, 1929.

[fol. 421] Transit House

Respondent's building known as the "Transit House" is a hotel of 60 rooms of which eleven are equipped with bath and running water, the other 49 have neither bath nor running water. In the particular instance of that hotel I absolutely would not regard that as an element of [fol. 422] obsolescence because the class of patronage obtained at that hotel desire rooms without bath and without running water and should that hotel be further equipped today with running water and baths throughout we would very steadily run away our patronage, even if we furnish the accommodations at the same price because they are just not used to bathrooms (T. 306). The Transit House was completed in 1903 or 1904. At that time it had a bar room in the basement. That was before my time, but I heard that it was well patronized. The space formerly occupied by the bar room is now used for storage and does not bring any revenue to the hotel. I do not regard the Transit House hotel as obsolescent now and I do not think it ever will become obsolete so long as it remains a stockman's hotel (T. 307). To the following question: "Then in setting up a depreciation reserve, in your opinion, the Secretary need not take into consideration any allowance for the Transit House becoming 'obsolete'" counsel for respondent objected (T. 308) and after discussion and argument extending over pages 309 and 310 the witness stated that he had not given enough consideration to the subject as yet to enable him conclusively to answer that question, saying that "In other words I have not arrived at a definitive figure which I would place on the life of that building."

As to whether or not the Transit House is well patronized my answer is "Yes" and "No". Very recently the room patronage has increased due to a new class of patrons appearing. The dining room patronage has always been poor and is poorer now than ever before (T. 311).

The new class of patronage is caused by the truck-in business which comes to the stockyards. They come all

through the night and day but a large number comes at [fols. 423-426] night. The average number of rooms occupied is entirely dependent upon the weather conditions. There might be an average of three days of one week of 50 registrations. The succeeding week the average for the entire week might be 15 registrations per day. It is entirely dependent upon other elements (T. 312).

[fol. 427] Land—Respondent's Appraisal

Mr. WILLIAM E. SPRATT, a witness called by the respondent, being first duly sworn, testified in substance as follows:

I am in the real estate business in St. Joseph, Missouri, where I have resided for over 40 years. During all of that time I have maintained and operated a real estate office in that city. Our firm is a member of the local Real Estate Board. We do a general real estate business including buying and selling on commission, making loans and appraisals and owning and operating real estate which is used for various purposes. My firm consists of my son, Elliott C. Spratt and myself. We do business under the name of Spratt Real Estate Company. My civic activities since coming to St. Joseph have been, President of the (T. 324) local Realtors' Organization, and for many years a member of its directory. I am now Chairman of its appraisal committee. I have at different times been president of the St. Joseph Chamber of Commerce and of the Rotary Club. For two terms, for 4 years, I was elected and served as Mayor of the City of St. Joseph. I served as President of the local Automobile Club, and am now a member of its directory. I was on the committee of citizens which drafted the present municipal charter under which St. Joseph now operates. During the World War I volunteered and served over seas for 8 months in war relief work. Before going to Europe I was for two years secretary of the St. Joseph chapter of the Red Cross Society.

In addition to my regular real estate business, I was employed by the Burlington Railroad Company several years ago to negotiate the purchase of some 60 or 70 houses [fol. 428] and lots in connection with the railway's contemplated widening of the South Fifth Street trackage in St. Joseph. Later I was employed by the same company

to secure for it the title to 100 houses and lots in the development of its "Florence Yards" which extends from Florence Road on the North down to the present St. Joseph property. (T. 324.)

In 1922 the City of St. Joseph employed Mr. F. M. Atkinson and myself to value before a court commission about 600 acres, consisting of some 1100 parcels of land which the City was condemning for parkway and boulevard purposes. I valued for the St. Joseph School Board, 34 lots in blocks 17 and 18 of the St. Georges addition. Those lots are not far from the stockyards property and lay North and East of the Exchange Building. Mr. Atkinson and I served at the instance of the city in the condemnation of about $1,000,000 worth of real estate upon which the $1,000,000 new city hall was constructed. We performed a similar appraisal service which resulted in the taking over by the City of another million dollars worth of property to be converted into a civic center. In 1917, Mr. Atkinson and I were employed by the six trunk line railroads entering St. Joseph to value all the land, exclusive of improvements, owned by the various carriers in the city. We found values totalling $8,000,000. In 1921, Mr. Atkinson and I were employed by the St. Joseph Water Company to value real estate holdings and rights of way of that corporation. In 1925, we appraised a number of properties for the St. Joseph Gas Co. and later we appraised the property of the Union Terminal Railway Company and that of the Belt Railway Company, of St. Joseph (T. 325). At times innumerable I have appraised much real estate here in St. Joseph for various corporations, estates and individuals. [fol. 429] I am the local examiner and appraiser of the value of all lands in St. Joseph upon which loans are made by the Santa Fe Savings and Loan Association and the Metropolitan Savings and Loan Association, both of which have headquarters in Kansas City, Missouri. Our firm was for many years the resident real estate brokers through whom the Standard Oil Company sold, purchased and leased all of its land holdings here in St. Joseph.

Mr. Atkinson is not and has never in any sense been my partner, except in those cases in which we have been employed together. On the contrary, for some forty years our offices have been in strict and active competition for business. It just happens that we have been requested many

times to appraise the same property for the same people (T. 326), and we have done a great deal of that work together.

Mr. Atkinson and I have appraised respondent's lands. Several times within the last 6 months we have visited those properties and were shown over all the several tracts. We were given maps and drawings indicating the properties as well as those of allied business. For many years Mr. Atkinson and I have been reasonably well acquainted with the various industries that constitute the stockyards district. The paper marked for identification, Respondent's Exhibit No. 4 is a summary of the valuation which Mr. Atkinson and I made of respondent's property (T. 327).

The population of St. Joseph is about 85,000 people. It is situate on the Missouri River 60 miles by rail north of Kansas City and 132 miles south of Omaha. It is 327 miles west of St. Louis and 490 miles from Chicago and 545 miles by river from St. Louis. It is in the northwest portion of Missouri and its immediate territory constitutes that rich agricultural and livestock producing section [fol. 430] which comprises portions of Missouri, Kansas, Iowa and Nebraska. Six transcontinental trunk line railroads,—The Union Pacific, Missouri Pacific, Burlington, Chicago-Great Western, Santa Fe and Rock Island, center at St. Joseph. There are in St. Joseph over 20,000 individual homes with some 25,000 families. For the most part the residences are situate on the high grounds (T. 328), to the east and north of the business section. There are 230 miles of street, of which 170 miles are paved. There are 40 public schools with 465 teachers and about 19,000 children of school age. The city is served by adequate street railway and bus lines. The public utilities of water, gas, electric current and telephone are a credit to any city of a much larger population. There are five public libraries, with over 125,000 circulating books. There are 13 fire fighting stations, each equipped with modern up-to-date auto trucks, with 147 firemen. There are two police stations with 115 patrolmen. There are over 750 acres of public parks, with municipal golf links, and several city swimming pools. It is a community which makes for good living and comfort. Its population is largely American. Its citizens are mostly home owners. Its laboring people are of the highest class and character. There is a substantial and splendidly developed residential section in easy walking

distance from the stockyards and packing house industries. The City of St. Joseph constitutes a community which, since the pioneer days of 1826, has been a service station for the demands of an increasingly large surrounding territory. It is renowned for its wholesale business and distributing warehouses. These sales annually run into many millions of dollars worth of groceries, millinery supplies, drygoods, hardware, flour-mill products, candy factories, letter-writing tablets, and for its men's furnishing goods, [fol. 431] which are sent into its trade territory, extending to the Pacific Coast and throughout each and every state west of the Mississippi river (T. 329). One of the largest, if not greater than the sum total of all of the other industries, is the allied interests of the cattle, hog, and sheep market which is afforded by the stockyards and the packing houses, whose products are shipped all over the world. These great livestock industries have been located and have developed into their enormous volume of business within the last generation, since 1896. As the center of the population of the United States has steadily crowded westward, these enlarging interests have sought the field of the production of their raw material. Even as have the great smelters grown up in the ore region; as the gins and mills have begun to be located in the cotton producing territory; for that same reason, the packing house industry has gradually drifted westward following livestock developments into this section of the United States. There was a time when Buffalo, New York, had the call for the large stockyards and the big abattoirs. The industry then drifted to Cincinnati, then to Chicago, then to St. Louis, and then into Kansas City, St. Joseph and Omaha. Four of the five largest beef, hog, and sheep killing establishments, with their enormous stockyard facilities, of this Nation, if not the world, are located on the Mississippi and Missouri rivers, one at St. Louis, and the other three on the Missouri River, at Kansas City, St. Joseph and Omaha. In this territory, in these fertile river (T. 330) valleys, is located the greatest cattle, hog and sheep raising industry of the Nation. It is the cornbelt of the United States. It has been demonstrated that corn produces the sweetest, the finest, the juciest, the highest priced, and the most sought after meat, and is the best food upon which the animals can be fed. These stockyards and the packing houses are not located

[fol. 432] at these various points for any other reason than the advantage which each location affords such an industry. The whole allied interests has been gradually for years working into this great central west on the largest sweetwater rivers of the Nation, where in all probability, these industries will now remain, and continue to grow and to expand and develop throughout all time.

The Chicago Stockyards and the packing houses are today probably the largest in the world. There they are hedged about and bound in by densely populated territory, with such a high value of land that is almost equivalent to steel and iron bands around them, which practically prohibits further expansion at that point without unreasonable expense. Then, furthermore, for economy of production, it is expedient that these meat producing industries should be located in this more central territory, in the locality where the most livestock is produced. Only from 18 to 25 head of live, fat steers on foot can be shipped in a car, from this locality of their production, into the killing market at Chicago. There (T. 331), afterwards, as beef, it must be reshipped; while from here, some 45 to 55 beeves can be expressed in a refrigerated car, and can be consigned directly into its market of consumption, anywhere in the United States, Canada, or Mexico. There is, furthermore, a decided benefit to institutions of this character and size to be located near by and adjoining a big city, and to not be situate within the city limits. There is the element of city taxes which is not imposed. Probably the most of all to be desired is the avoidance of the annoyance and bother by not being technically supervised and directed by the various political city boards and directors. Here is an industry upon which so very many elements have a bearing upon its monetary values that as we go into the matter, [fol. 433] seeking information wherever possible, we find it exceedingly interesting and fascinating. In the first place, we find that there are three enormously large institutions that are all intertwined and interlaced and so bound together and interlocked, and so exceedingly dependent each upon the other by a mutual business relationship, that the three institutions almost constitute one great big industrial proposition. There could be no very considerable sized packing plant except for the facilities of stockyards, nor could there be successful stockyards without packing houses. A service railway is also necessary with which to

serve both the stockyards (T. 332) and the packing houses. Consequently, these three component parts of a large industry, begin to take on a similar value in so far as the land they occupy. We realtors rather enjoy an opportunity to value real property when the improvement and the occupancy are in keeping with the time and the demands of its location. There is ever that element of potentiality which contributes to all real estate values, and, too often, we find that in evaluating land that its future use seems to contribute to its greatest worth. In this instance, we find the greater portion of this land already put to a practical, useful, profitable purpose and occupation. The volume of the business transacted by the various allied interests of the stockyards at St. Joseph, indicating its far reaching service, makes an interesting story, and reflects directly upon the value of the land occupied. Solely on the account of the stockyards and packing house industries there is established and located at this point a bank in the Livestock Exchange Building, which in 1926 had paid-up capital of $350,000. It had a surplus of $150,000.00 and there was over $3,500,000.00 in deposits. The transactions of this bank which is confined almost solely to the livestock industry is [fol. 434] each year nearly one-half of the total sum of the footings of the eighteen other banks which do business throughout the entire city. There is a (T. 333) United States Post Office made necessary at this point, which is separate and apart from the general Post Office of the City of St. Joseph. It is located in the Exchange Building, and is called "South St. Joseph". In 1928 it had a stamp sales receipts of approximately $45,000.00. We ascertain that during the year 1928 that there were received at the Stockyards the total number of 3,911,409 head of cattle, sheep, hogs, horses, and mules which had a value of $100,600,825.00. The value of this livestock was greatly and enormously increased as it was reshipped as beef, pork, and mutton. It is essential to the value of a property of this character as to whether it is an established, going, and prosperous business. We find that the average annual receipts for the four years of 1925, 1926, 1927 and 1928 were 51,850 cars of stock, while in the year of 1928 there were received in the stockyards livestock equivalent to 52,363 cars. There were in 1928 employed daily in the three allied interests about 3,500 men and women who labor in these institutions. The average payroll of all of these people is over

$10,000.00 each week which reaches the enormous sum of $5,231,664.10 for the year. There is a daily newspaper published at this locality which has a daily circulation of over 3,000, which serves the patrons of these three allied industries. There is located at the stockyards (T. 334) what is known as the "Stock Exchange Building." It consists of a four story brick office structure which in addition to the offices of the Stockyards Company, the bank, and the Post Office, contains more than 100 offices which are occupied on a rental basis by the livestock commission merchants. These same commission men still further use in the conduct of their business many pens and yards which [fol. 435] produce a large income to the stockyards company. As unmistakable evidence of the influence of the stockyards upon property values, we have but to look back a few years to the time when the former "Livestock Exchange Building," which was located at the foot of Missouri Avenue, which is about eight blocks north of the present Exchange Building, caught fire and burned to the ground. After this fire, the building was not rebuilt at its former location, but was removed to the foot of Illinois Avenue where it is now situate. As evidence that the adjoining land does not make the value of the stockyards properties, but as evidence that the stockyards and allied interests established the value of adjoining land, we point to the fact that when the original Exchange Building was destroyed by fire, and was at that time relocated, that the values almost immediately went completely out of Missouri Avenue property. It is today difficult to sell a lot on West Missouri Avenue at any price. There is no demand whatever for it. At Illinois Avenue where the land was not originally so inviting, it is today the highest priced retail section of that community. The removal of this one building killed one section of (T. 335) that community and immediately established another. Equally so in our opinion have the values of these three allied interests been reflected into all of the property in that locality and vicinity. The farm lands adjoining do not reflect their value into the stockyards, but, to the contrary, the value of the stockyards' land has wonderfully increased the value of the farm lands. In our opinion, it is not fair and it is not just to the properties of the allied interest to gauge and to estab-

lish the values of their lands by what unimproved adjacent real estate can be purchased. We have examined a large number of records of real estate transfers of property ad- [fol. 436] jacent and in the vicinity of the stockyards and of the packing houses. Many of the sales, we are personally acquainted with and we know of the circumstances and conditions under which they were made. Outside of the Belt Railway circle, and especially as we extend more remote, from the active associated inter-sts, almost in every instance the value per square foot, or per acre, is much less than that of the allied interests properties. There are some properties on Illinois Avenue, which on account of the intensified mercantile use and business occupancy to which they are applied, which exceeds the square foot value of the land of the stockyards interests, but these tracts are as unfair for any comparative value as these of too little worth. In almost any instance (T. 336), all through that territory, the values of adjacent land are either made or destroyed by the very nature of the occupancy by the packing house industries. We do think, however, that the transfers on Illinois Avenue more correctly reflect and indicate the value of the stockyards land than those of the outlying, dormant, inactive properties, such as Kirschner's Addition, Pettipiers Addition, and some of the waiting farm lands. We have not taken these values and literally applied them to the adjoining land, but we have considered them all together with the many other things which we took into consideration before reaching our final unit value. It is a rule, where possible, to appraise the value of land by that sum which a willing purchaser would proffer a willing seller. But such a price might not always be just and fair for the estimated value to an adjacent owner. Property could easily be adjacent and adjoining and not be similar in character and value, as for instance, take the three properties consisting of the stockyards, packing houses, and the Belt Line Railroad. These three properties in their high state [fol. 437] of development and useful active occupancy are the only properties of similar character in that section, and in valuing the land of the St. Joseph Stockyards Company we have given it the value of the only adjacent similar land, the packing house land and the railroad property. We have reference to land values alone, exclusive of the improvements thereon. Institutions of this character, to be successful, should (T. 337) be first located in the territory

of the origin of their raw product. They must, for provisions of health, cleanliness and sanitation, be on a large body of water. If on a river, they should be below the densely populated territory. For the sake of abundant labor they must be located near some city. There should be good living facilities and good homes near by. Business acumen requires that room for expansion must be considered. Many large institutions throughout the country through lack of opportunity to extend and expand have been put to the enormous expense of removing their entire plant to other localities. Railroad transportation, and in these latter days, truck service, is a vital factor and must be considered.

Greatest in value of real estate in all of the big cities is that property which is in line with the current of retail trade. It is where the greatest number of people are to be found during shopping hours. The best retail sections of St. Joseph have a selling and rental value as high as forty dollars per square foot. In the wholesale district, which is back of the retail section, but in some instances adjoining, we find that the improvements and cost of building, on account of enormous size, is very high, but the land value is greatly reduced. In the wholesale section of St. Joseph the ground can be purchased (T. 338) from $2.00 to $5.00 per square foot. Manufacturing and industrial [fol. 438] property over the city varies in value and sometimes reaches as high as fifty cents a square foot. The reason for this is that not nearly so many people frequent the wholesale district as are in the retail district. The packing house and stockyards section of St. Joseph are more in comparison with the wholesale and industrial sections as to value. Their business is conducted largely through customers who never visited the market. It is purely and solely on account of the great volume of business, and its profitable and useful occupancy by the wholesale merchants and manufacturers, and equally so by the Stockyards, and its allied industries, which breathes the greater values into the land they occupy. It is unfair and unjust to judge the value of a live, useful and working property by the value of an idle, slothful, inactive tract which happens to lie adjacent and adjoining, whose potential worth is its greatest consideration, and whose final occupancy may be of entirely different character and purpose. We

have been exhibited a lease on the land under which the St. Joseph Belt Railway Company operates. It begins January 1st, 1929, and expires December 31st, 1938. The rental is on a basis of $60,702.00 payable annually, plus the taxes and other expenses chargeable to the land. Considering the Belt (T. 339) Railway Company occupies about 75 acres, at this rental, it pays a 6% net income on a $0.30 per square foot value for about $1,000,000.00 worth of land. In giving our estimate of the value of all of the land which the stockyards occupy in the conduct of its business, a question might be asked why do we attach the same value to all of the acreage, even though a portion of it is located quite remote from the center, or from the highest developed part of the tract. Our answer would be that all of the ground, taken together, should be considered jointly, making one large industry. The land value should be consid- [fol. 439] ered as a tract. It is different from a city block, with several ownerships, where each tract is a distinct unit used for different purposes. A sound and dependable and useful workhorse is valued at one hundred and fifty dollars. Someone seeks an analysis of the value of the several parts of the animal. The question is asked, "What is the value of the hind leg?" Another seeks to know the worth of his shoulder, and so on, is the value of every portion of that horse sought. It is impossible to justly arrive at the worth of a live and useful work-horse by this process of reasoning. He is worth $150.00 as an assembled, sound and usable animal. Every part of the animal takes on the same value. Equally so is every acre of this land which is used by the St. Joseph Stockyards in the conduct of its business, while being operated together, worth the same amount of money. In considering the always intricate problem of what is the exact and actual value of any piece of real estate, there must always be considered, and ever used, a large element of "common sense" and judgment. It is not difficult to add, subtract, and multiply, and to arrive at an absolutely correct answer to a purely mathematical problem. In the appraisal of land values, there are no invariable rules, there is no positive and absolute method by which to arrive at an infallible conclusion. A fat steer is to be weighed. Two men look the animal over. One says to the other "That steer will weigh 1400 lbs." The reply is "How do you know it?" The man who made the esti-

mate gave as his reason for the amount, that it was his opinion from his experience and observation of many times having before seen other animals weighed. The steer was driven on to the scales. It weighed exactly 1400 lbs. There was no attempted analysis of what each particular portion [fol. 440] of the steer weighed. The animal was considered as a whole. In that same manner have we arrived at our conclusion of the value of this land, based on the things we have considered, plus our years of experience in the real estate business. There are many (T. 341) elements that go to make up market values, but the all persuading argument is the adaptability of a particular tract or a building for its intended use. Outside of sentiment, and of a speculation, property is only valuable because it produces an income, or returns a profit, or serves a purpose. We must next seek the term, or length of time, that such a property will probably continue in a useful condition. The rule of procedure, and undoubtedly the proper method, to value a piece of real property is to consider it for its highest and best use. We consider the land of the St. Joseph Stockyards to be so used at this time (T. 342).

To the foregoing statement of the witness, set out on pages 328 to 342, both inclusive, of the transcript, counsel for the Government objected on the ground that said statement is immaterial and irrelevant for that there is no connection or pertinency between the description of the past and future of the City of St. Joseph as set out in said statement and the valuation of respondent's land. Counsel stated that due to the putting of the witness' statement into the record as a whole, counsel was under the necessity of objecting to it as a whole but wished to point out before the oral argument their particular objection. This was agreed to by counsel for respondent upon the condition that they be given sufficient notice to enable them to prepare reply (T. 343). The objection was overruled by the Examiner and the witness continued his testimony in substance as follows:

Mr. Atkinson and I agreed upon the outlines of the zones, which zones are shown on Respondent's Exhibit No. 4, [fol. 441] and reported them to Mr. Kosters (T. 344). At our suggestion he outlined these zones on the blueprint marked for identification Respondent's Exhibit No. 3, and resubmitted it to us. He computed the square feet or the

acreage of each tract. The unit prices appearing on Respondent's Exhibit No. 3 are those which Mr. Atkinson and I gave to Mr. Kosters and they correspond with the summary marked for identification Respondent's Exhibit No. 4.

Zone A

Zone A is a tract containing 74.72 acres or 3,254,803 square feet and is the land which is in active use by Respondent in the daily operation and conduct of its business and upon which all of its yards, pens, scales, Exchange Building and all of the improvements and equipment is located. It is the most extensively improved and developed of any property of its character in that vicinity. We place the value of 30c per square foot upon the entire tract which, according to the dimensions given us, makes a total of $976,440.80 (T. 345).

Zone B

Zone B is a tract of 17.09 acres or 744,440 square feet. It is of the same character as the land occupied by Respondent's hog sheds and has equal railroad service. It joins that portion of Respondent's land which is actively used in the conduct of its business. At present zone B is occupied by a hog serum company. It is located at the south end of the hog sheds and is one of the practical and logical sites for extension of the hog division. Considering that it is not actually in use by Respondent for the immediate conduct of its business but is in waiting, we do not value [fol. 442] this tract as high as zone A. We value it at 15c per square foot which amounts to $111,666.00 for the entire zone B (T. 346). We value the property in this zone with the idea in mind that in keeping with good business, in providing for the future an institution as large as Respondent's could not afford to do otherwise than hold such a tract for future extension. It dare not bottle itself up in such a manner when upon demand it could not extend the service of its hog yards. Such a tract, therefore, has a present and a potential value, both of which elements we have taken into consideration.

Zone C

Zone C is a tract of 22.91 acres or 997,960 square feet. It lies immediately north of the present cattle pens which

is the logical and practical direction for this branch of the stockyards to extend. It has all the railroad facilities of any of the properties in that vicinity and in addition it faces the north on one of the main paved streets leading to the uptown section. While waiting to be called into use by the extention of the cattle pens the tract is used for sheep and cattle feeding yards. Considering that this tract has first call for any extension of the cattle pens, we have placed on it a value of 15c per square foot which is $149,694.00 for the entire zone. In this tract we find the location for the logical and practical extension of the cattle pens (T. 347). It stands exactly in the same relation to the cattle yards as zone B stands to the hog yards.

Zone D

Zone D is a tract of 11.60 acres or 505,296 square feet. It is exactly the same character of land as that occupied by the packing houses. It has every service of the railroad and other utilities that any other tract has in that locality. [fol. 443] It lies immediately north of and adjoining Swift & Company's plant. It is the most inviting and attractive piece for any extension of or addition to the packing house industry. Considering that it is not actually in use at this time but is held for extension purposes, we do not value this tract as the one adjoining, but place upon it a value of 20c per square foot which is $101,159.20 for the entire zone.

Zone E

Zone E is a tract of 10 acres or 435,600 square feet. It stands in exactly the same attitude and relation that tract B holds except that it is at the south end and more remote. It has all the railroad facilities and is probably the second tract in call for any extension of the packing house industry. Considering that it is not actually in use for that purpose at this time but is being held in waiting for packing house extension, we place upon it a value of 15c per square foot, which is $65,340 for the whole zone (T. 348).

Zone F

Zone F is a tract of 47.47 acres, or 2,067,793 square feet. It is a beautiful and attractive piece of land which can be used for the extension of either the stockyards or the

packing house industry. It joins those properties on the south. It has every railroad and sewer service and is a tract that any organization like Respondent could not afford not to own and control. It is of the same character as the land actually used by the stockyards and packing houses and in our judgment has an actual and reflected value of $2,500 per acre, or 6c per square foot, which is $124,067.58 for the whole zone. The same may be said of this tract [fol. 444] as was said with reference to zone B, except that there are two specific uses which the future holds in store for it. It can be absorbed by the packinghouse industry either for the extension of a present plant or as the location of an entirely new plant. It also has a possible use by respondent itself. If a new plant were to be established in St. Joseph its logical and practical location would be on this tract. The general plan and scheme of all the industries here is that of having the packing houses and the stockyards parallel each other. This is done to effect economy in service.

Zone F-1

Zone F-1 is a long strip of ground containing .87 of an acre or 37,897 square feet. It fronts about 1300 feet on Alabama Avenue. It lies across from Zone I and F and is separated from them by the Street Railway right-of-way. It has the advantage of street railway service (T. 349) and of Alabama Avenue which is paved. It is within easy access of the Union Terminal Railway with sewer facilities. It is particularly adaptable for small manufacturing or industrial plants. It is our opinion that this tract is worth 6c per square foot which is $2,273.82 for the entire zone.

Zone G

Zone G contains 22.537 acres. It lies south and west of the active stockyards and packing house properties and east of the Stewart Inso-Board Company. It is served by the Union Terminal Railway Company and has the advantage of a public road on two sides. It is a very beautiful and attractive tract which is surrounded by ground used by high-class industrial institutions. This character of land which is already to go with its paved road, sewer and switch [fol. 445] track facilities is, in our opinion, worth $1,000 per acre, or $22,537.00 for the entire tract.

Zone H

Zone H contains 10.88 acres. It lies immediately across the road to the north of Zone G and is of the same character. It enjoys the same improvements and accessibility and in our opinion is worth $1,000 per acre or $10,880.00 for the entire tract.

Zone I

Zone I contains 9.10 acres. It lies in a triangular shape immediately north of Kirschner's Addition. It fronts on the south on Alabama Street (T. 350) which is the main paved thoroughfare leading to Lake Contrary, the leading summer resort of this community. It has the advantage of a street on the south and the service of Brown's Branch ditch for drainage. In our opinion it is worth $1,000 per acre or $9,100.00 for the entire tract.

Zone J

Zone J is a tract of 24.90 acres of land. It lies west of and adjoining the paved road and has the services of Brown's Branch ditch for drainage and a switch track which, though not actually built into this zone, is of easy access. It is separated by a paved road only from the highest priced industrial property in St. Joseph. In our opinion it is worth $1,000 per acre or $24,900 for the entire tract.

Zone K

Zone K contains 15.612 acres. It is much the same character of land as zone J. It is about as accessible and in gen- [fol. 446] eral would be as usable as Zone J but owing to the fact that it is not so high nor quite so well filled and being more remote from the switch track facilities we placed on it a value of $700 an acre, or $10,241.27 for the tract.

Zone L

Zone L contains 18.04 acres. It is served by a paved road leading from uptown and is across the road west from the Grain Belt Mills. There is a swale and a strip of low ground which extends (T. 351) through one end of it. This tract faces on the Missouri River. There are

many industrial institutions that would enjoy opportunity to have land of this character. We place upon it a value of $500 per acre, or $9,020.00 for the entire tract.

Zone M

Zone M contains 12 acres and lies north and west of the property of the St. Joseph Tanning Company. It is a triangular tract with hypotenuse fronting on the river. Along this entire frontage the United States Government has done extensive protective work by revetment piling. Considering that this tract is more or less cut up and hid away we are constrained to value it lower than Zone L, although the two zones are of much the same character. We value it at $350 per acre, which is $4,200 for the tract as a whole.

Zone N

Zone N is a tract of 56.60 acres. It is one of the finest tracts in this whole vicinity for industrial purposes. To the south of it across the road is the allied interests of the stockyards. To the west are some of the largest grain elevators and most extensive flour mill properties of this city. It has fine drainage facilities. It has wonderful [fol. 447] street approach and is a location that stands out prominently and invites occupancy by various industrial institutions. We value it at $3,500 per acre, which is $198,100 for the entire tract (T. 352).

Zone 1

Zone 1 consists of lots fronting on Illinois Avenue situate east of the railroad tracks and within the city limits. These lots constitute some of the highest priced properties in the retail section of that community. Upon part of this ground is the Transit House Hotel which is a four-story building and is the hostelry patronized by the stockmen of that communiy. The tract contains .544 of an acre, or 23,697 square feet, upon which we place a value for the unimproved ground of 40c per square foot or $9,478.80 for the entire tract.

Zone 2

Zone 2 consists of the properties upon which the extensive horse and mule barns and sheds are constructed.

These are adjuncts and supplemental to the stockyards industry. The tract contains 3.19 acres, or 138,956 square feet, which we value at 15c per square foot, or $20,843.40 for the entire tract.

Zone 3

Zone 3 is a tract that has been laid out into lots with streets and alleys. Lake Avenue, which extends the full length of it, has been paved and is the main thoroughfare to Lake Contrary. It has all the general public improvements that any portion of the city enjoys. The property is usable for small residences or for industrial purposes in the assembled tract. Evidently this property has been held for expansion purposes for the horse and mule [fol. 448] market. The advent of automobiles and farm tractors, together with the ending of the War, about ended the demand for any more horses so that the purpose for which this ground (T. 353) was held does not exist any more. This tract contains 14.351 acres, or 625,130 square feet, which we value at 8c per square foot or $50,010.40 for the entire zone (T. 354). The summary of our valuation is $1,900,000.77 and is contained in Respondent's Exhibit 4.

Counsel for respondent stated that they reserve the right to correct any errors of computation which might be found in this exhibit.

We were requested to appraise respondent's land as of June 30, 1929. We appraised it as of its value at that date and not as of any other date; also we appraised it according to the conditions we found properly at that time. We appraised it on the condition as we found it and not upon any change of conditions that might ever occur (T. 355) but we always consider the permanence, that is to say, how long the land will remain in that condition for that has a great deal to do with the value of a property. We considered that the land used by respondent would continue to be so used indefinitely. We know of no reason why it should not.

I am familiar with the book written by John A. Zangerle entitled "Principles of Real Estate Appraising." I have it in my library. Mr. Zangerle is considered an authority among real estate appraisers. He has written a number of books. I thoroughly agree with the statement on page 24 of that book which reads as follows:

"Some realtors and accountants fix different values as the basis for stock and bond issues, for purchase purposes, for cost accounting or income, or general tax purposes. With these theories of a different valuation, according to [fol. 449] the color of the eye of a client, one has little sympathy. These 57 varieties of appraisal, to suit a purchaser, are not calculated to elevate the profession. Nothing more nauseates an owner than to discover different appraisals of the same real estate for different purposes by the same appraiser. By this practice, realtors, assessors, and accountants lose the confidence (T. 356) of the public and invalidate the credibility of their work."

Thereupon the Government objected to the question and moved to strike the answer in that the principles governing the determination of land values for rate making purposes are questions of law which have been determined by the Supreme Court of the United States. The objection was overruled and the motion to strike denied (T. 357) and the witness continued his testimony in substance as follows:

We looked up real property transfers in the vicinity of respondent's property. We employed a man who is competent to examine the records and he found through leases and otherwise in that vicinity some 53 transfers of which we have considered every one. They include some of the transfers that Mr. Mack testified to the other day. We know of the tracts that he testified to and we considered those (T. 358).

Thereupon counsel for respondent tendered counsel for the Government for cross examination or other purpose a list of the transfers referred to by the witness. In response to questions by counsel for the Government the witness stated that while he did not blend literally the prices of these transfers into the values he placed on respondent's land, they did consider them in reaching their opinion, which opinion was influenced to some extent by these transfers. Thereupon at request of counsel for the Government, counsel for respondent had a list of transfers marked for [fols. 450 & 451] identification as Respondent's Exhibit 5. Continuing, the witness testified in substance as follows:

The pencil notations at the bottom of the various sheets of this exhibit were inserted by me to identify the deeds and memoranda that I made on them at the time (T. 359).

Thereupon respondent introduced in evidence without objection as respondent's Exhibits 3, 4, and 5, the map and papers set forth, identified, and discussed.

RESPONDENT'S EXHIBIT No. 4

Land Values

St. Joseph Stock Yards Company

Zone	Acres	Sq. Ft.	Price Per Acre	Price Per Sq. Ft.	Value
A	74.72	3,254,803		.30	$976,440.80
B	17.09	744,440		.15	111,666.00
C	22.91	997,960		.15	149,694.00
D	11.60	505,296		.20	101,159.20
E	10.00	435,600		.15	65,340.00
F	47.47	2,067,793		.06	124,067.58
F-1	.87	37,897		.06	2,273.82
G	22.537		$1,000.00		22,537.00
H	10.88		1,000.00		10,880.00
I	9.10		1,000.00		9,100.00
J	24.90		1,000.00		24,900.00
K	15.612		700.00		10,241.27
L	18.04		500.00		9,020.00
M	12.00		350.00		4,200.00
N	56.60		3,500.00		198,100.00
1	.544	23,697		.40	9,478.80
2	3.19	138,956		.15	20,843.40
3	14.351	625,130		.08	50,010.40
Total	372.414				$1,900,000.77

[fol. 452] Cross-examination:

I am acquainted with W. L. Mack. He has an office in that part of the city known as South St. Joseph and Mr. Atkinson's office and mine are located uptown. The three of us have acted together in the appraisal of some lands but have never so acted in respect to respondent's land. I have acted with Mr. Mack on the appraisal committee of the Real Estate Board (T. 360). I have a very high regard for Mr. Mack. I do not think I would fail to take up with Mr. Mack, Mr. Smith, or some of the agents who live and operate in that section of the city any value in South St. Joseph about which I was consulted. Mr. Mack frequently consults with me about values uptown. I think he and the other real estate agents in South St. Joseph would do that with some of us who live uptown.

If the stockyards and institutions of that character were located away from the facilities of good living it would materially affect the value of institutions of that kind. I set forth at considerable extent the facilities of good living around this community and of the availability of good labor

and thought that it all had a direct bearing upon the value of an institution of that kind (T. 361). I think undoubtedly that respondent's land would be less valuable were it located in a community where the facilities for good living are poor, especially if there were no population from which labor could be drawn. Undoubtedly if the stockyards were in a city without fire protection the land would be less valuable. I consider that the superstructure and the value of [fol. 453] the land run together. We have only attempted to give you a land value but there is a superstructure valuation that goes right along with the land. I do not, of course, include the value of superstructures but I think that having superstructures upon the land increases the value of the land.

I said that I agreed with the quotation which was read from page 24 of Mr. Zangerle's book (T. 362).

I think Mr. Zangerle spoke rather facetiously when he said "57 varieties." I think the idea he intended to convey was that there was one value of real estate and not two or three. That value is according to the highest use to which a piece of property can be put. Its value for that use is not necessarily determined from the income derived from that use. For instance, a residence can be worth so much money without any income from it at all. Industrial property cannot always be governed by the income, whether or not it is a profitable business. If it be an unprofitable business and improperly managed there would be a different condition than if it were a well managed business. So we don't read into the real estate value wholly on the return on the investment; cannot do so. I don't know whether it is true that the unprofitableness of the business located on the land would be due either to bad management or to the fact that it was not the highest use to which the land could be put. A piece of property under one ownership might be worth less than the same property under another ownership. That is a matter of management and one thing and another (T. 363).

Many things read into the value. The St. Joseph stockyards has good management and a good reputation. I think the land in the stockyards is used today for its highest and best purpose. I do not think that the income from that use [fol. 454] would govern the value of that land. There are fluctuating times and conditions. It would have to go over a period. I would not want to go on one day on an institu-

tion, or one month or one year. I would not want to say whether over a long period the income derived from the highest and best use of this property under good management would determine its value for industrial purposes. I don't know about the management of it. The income derived from its highest use under good management would have a bearing, I am sure, upon its value for industrial purposes. I think it would have considerable bearing, but I would not want to say that it had the controlling interest (T. 364).

I think the permanency of the business and the service it gives to the community would have a controlling bearing. I agree with Mr. Zangerle's statement that "Nothing more nauseates an owner than to discover different appraisals of the same real estate for different purposes by the same appraiser." But I don't say that it would nauseate the owners of the stockyards property if they should find that the Government had valued their property at one price for rate making purposes and that the tax assessor had valued it at another for tax purposes. It would not be nauseating to me to be associated with any other gentlemen and have them differ in their opinions from my opinion (T. 365).

I think that an appraiser ought to have an appraisal value on a piece of property taking everything into consideration and that he ought not to imagine then some other condition exists and have another value. I know the character of men who make tax assessments. I have been called on a great many times by men who are elected (T. 366) to office to make certain tax assessments. I know of the incompetency and irregularity of tax valuations all over our country and that they are not to be relied upon as real value. Such assessors are not elected because of their qualifications as appraisers.

[fol. 455] I am chairman of the Appraisal Committee of the Real Estate Board. I think there are five members of that committee. All five members do not join in the making of an appraisal. We have three men that act together and I, as chairman of the committee, have indicated these men. Recently there was a bond issue in the city of St. Joseph that contemplated something over $2,000,000. Appraisals were to be made on several sites on which schools were to be built. We departed from the usual custom of five men and appointed several committees that they might act at

once and make a report. I think at one time we had three committees of three men each (T. 367). They reported back to the whole committee, which reports in turn to the director and the director and the president make the report of the committee to the parties requesting the appraisal. I have never known it to occur where the whole committee would revise the appraisal made by the committee of three. The director has the power to do it, but I have never known of a change being made (T. 368).

I agree with the statement in Mr. Zangerle's book that forced sales and those which are merely transfers within a family have little significance in fixing market value. I gave such weight as I thought had a bearing to those transfers listed in Respondent's Exhibit No. 5 upon which I made the notation that they were to a holding company, or from a company to its trustee, or other similar notation. It is hard to say exactly what weight such transfers have where they are for purposes of bookkeeping and adjusting accounts from one trustee to another, they cannot have a great deal of weight in relation to actual values. I think I tried to consider all these transfers. When an individual transfers a property to a company which he has organized I would give weight to the transfer if I knew the circumstances under [fol. 456] which it was made (T. 369). That is, if the property had cost him a certain amount or if he had received a certain amount for it that would have a bearing on the valuo of the property, but if it were merely a bookkeeping transaction, it would be entirely different. In case of two corporations owned by the same individual and conveying to one another, I would give weight to such a transfer if there were an actual cash consideration and I would try to ascertain whether it was an actual sale or just a bookkeeping transaction (T. 370). If the same group of individuals owned two corporations and caused a transfer of real property from one to the other I would consider such a transfer in fixing real property values if the grantee corporation had a practical use for the property, but I would not give the same weight to that kind of a transfer as to one made at arm's length. I would want to investigate the details of it. On the face of it, it would look like it needed investigation. If the corporation had a practical purpose to which to put the land and it was going on to another institution I would think it would be bona fide and a just thing to consider. Being

specific, the Belt Railway Company rents from the (T. 371) stockyards company some million dollars worth of land. They base their rental on a 30c a square foot value on the ground which basis is upon the same value that Mr. Atkinson and I placed upon that ground before this lease was made. I don't know whether you have that in mind or not, but I think specifically it answers your question and is directly in line. I would think when they take a lease of that kind on a piece of property that has been valued by disinterested parties that would be a fair thing to consider.

I think the Belt Railway is interlaced and intertwined with the same people who own the stockyards, the directors being the same and some of the owners. I don't know that [fol. 457] they are entirely so. Assuming that they are entirely the same I repeat that I believe a lease of this character made upon a basis of valuation made prior to that lease by disinterested parties ought to have a bearing on the actual value. I mean by valuation made previous to the lease that Mr. Atkinson and I two years ago valued that property and stated that we thought it was worth 30c a square foot (T. 372). The property we valued was that occupied by the packing houses, the Belt Railway and the stockyards. We were valuing the Belt Railway property at that time in connection with a proceeding before the Interstate Commerce Commission. We placed on all three of those properties 30c a square foot. It was not necessary for us to value the stockyards at that time and we did not do so, but they were the same character of property and we stated in our appraisal that they were of the same value. We were valuing the Belt Railway and used 30c as a basis. We arrived at that value by a long process. It was much the same character of development as we have here (T. 373). The Belt Railway Company lease was made this year (1929) based upon a valuation made by Mr. Atkinson and me two years ago. To explain how I arrived at the 30c per square foot value of the Belt Railway property it would be necessary for me to re-read the long statement near the beginning of my testimony for I took all that into consideration. I tried to put into that statement everything that I took into consideration, using my common sense, judgment, and all the facts that I could assemble and I tried to write it down so that I would not forget anything (T. 374). In this

proceeding I brought my testimony in the Belt Railway Company proceeding before the Interstate Commerce Commission, Docket No. 785, up to date and changed it where I thought it ought to be changed. I tried to use the best [fol. 458] judgment that I had in gathering all the facts pertaining to it, I used the same process of reasoning. In valuing the Belt Railway property I used all three institutions together. I believe they are interlaced and intertwined, that they are dependent upon each other and that they bear the same value. The same assumption would establish the value of each one of them. In valuing the Belt Railway property I considered the same value of the stockyards property and also the Belt Railway and packing house properties. I read in detail in the beginning of my testimony how I arrived at my estimate and value of the stockyards property (T. 375). I did not specifically, absolutely and by itself, use the net income of the stockyards company in arriving at my valuation of the stockyards property. I don't remember that I mentioned that at all in my testimony before the Interstate Commerce Commission. My recollection is that I did not mention it. I don't think I even knew the value of it. In case two public utilities lay side by side, are owned by the same people, are both under Government regulation and it is to the interest of both to have a high value on their lands the question whether it is a proper method to value the land of one utility by a lease it makes to the other could be answered either "yes" or "no" (376). If it were an entirely different character of utility it would have an entirely different value of land, but if it were a kindred value of land I would know of no reason why my Government should prevent two corporations of that kind dealing with each other. As to whether the stockyards and the Belt Railway are the same kind of utility, they furnish service to the same people and as to using a lease made by one of them to the other as a basis of value I should think they would have a perfect right to have a deal with each other. They can name any rental in the lease which they [fol. 459] desire and the Government can name any rate that it wants finally, regardless of what they might have in it. As to whether the stockyards and Belt Railway Company could double the $60,000 rental if they chose, I would say that if fraud enters into a proposition of that kind it is

evidently an entirely different proposition than an ordinary business transaction (T. 377).

I did not state that zones A and B are all of the same basic character as to value. They are much the same but zone B is not used for stockyards purposes. I described it as being in waiting at a lesser value. As to whether if both zones A and B were entirely vacated they would be of the same value, I did not view them as vacant, entirely vacant and unoccupied. I viewed them in a high state of development (T. 380). As to whether assuming that they were all vacant I would look upon them as being of the same value, I do not know how to assume a thought that is an impossibility. It is highly improbable that those lands will be vacated. I would not attempt to make a valuation on an assumption that they were all vacant and as a realtor I decline to consider the question based on a proposition so improbable as that. I valued all the land in zone A at the same square foot value and the vacant spot of land in that tract just west of the hog division and east of Packers Avenue in such a small portion that I could not value it separately unless I made an [fol. 460] entirely new zone and it was so small that we did not take two bites of a pea (T. 381). I did not state that it was impossible to appraise vacant lands. I said that it is possible for me to attempt to value vacant land anywhere.

I can value a piece of property that is going to be razed. When a building is torn down and another improvement is made there may be an entirely different value that would be called a potential value. If it is presented to me that the building is going to be razed I value the land on that assumption. As to whether I could arrive at the value of the stockyards land on the assumption that the structures were going to be razed (T. 382) I would not be presented with a hypothetical case of that character, where you would wipe all of the value out. As I have said several times I valued this stockyard property as we found it. I did not value it upon any hypothetical question that the sub-structures and improvements should be wiped out. I valued it for the purpose of its highest and best use. To assume anything different from that is an entirely different matter. The assumption that the structures have been razed is so improbable that it converts itself into the proposition heretofore mentioned of making two values on one property at the same time by the same realtor (T. 383).

My position is that I did not feel that I could value the stockyards land on the theory that the stockyards is just wiped off.

My difference of 15c per square foot in the valuation of tract B is because it has not been brought into its highest and best use. When it has been brought into that use I think it will be worth just as much as the land in tract A (T. 384). If respondent were expanding the hog pens over on to zone B, I would think so much of that tract as the pens cover would immediately become worth 30c a foot. I would have to make another survey to determine the effect upon [fol. 461] the value which would be brought about by the subsequent destruction of those pens. I cannot imagine what conditions would then arise. As to whether the conditions would be different from what they now are, hog pens might be removed from the other end and put down there. As to whether so doing would change the land, Mr. Atkinson and I deliberated a long time over the value of the ground as we found it, hoping to give a fair estimate according to our best judgment as to what it was worth (T. 385). We did not give an estimate of this for Respondent because the Respondent was paying our appraisal fee. It would not have made any difference had we valued it for the Government or anybody else, we would have arrived at the same conclusion. We think that piece of ground, vacant and unused, being held in waiting, is the only logical expansion for the stockyards and for the Hammond Packing Company, which is now Armour & Company, and is worth 15c per square foot.

[fol. 462] I have not been through all those blocks of pens at the north end of my zone A which are marked Cattle Pens. I do not think that they are now used for the purposes for which they were originally constructed. It is the old cattle division, or part of it. I would not say that the pens are tumbling down now. I went through them at the foot of Missouri Avenue. At one time the Exchange Building stood there. In those days the cattle pens were the nearest to the Exchange Building and in that section was the greatest development. When they moved the Exchange Building eight blocks south of there those pens were left more remote and probably less used than those north of the Exchange Building.

I don't remember just exactly what use is being made of the area just east of the cattle pens marked "Five acres

tillable." I don't know whether or not it is leased out (T. 388). We walked over that ground but I don't remember the use to which it was being put. I did not seek to ascertain the rental of that land as a guide to my valuation of that land but where ground is in waiting a nominal rental has nothing to do with the value of the ground as it is just a carrying charge. In all probability the rental of such land for feed lots would not indicate value of the land in the pen area.

If cattle pens were built over my zone C I would want to re-survey it again on values before saying whether I would regard it as worth 30c a foot. I would want to re-survey it and re-value it after improvements were made before stating a value. My idea of the value of it would depend upon the use to which it was put and I would want to see that use before I would change my value from what it is at the present (T. 389).

Prior to my valuation of the Belt Railway Company it [fol. 463] was under lease at something like half of what it is now, but it had been under lease then for some ten years, subject to revision, and we are told that in 1918, the year the revision should have been, the war was on and the Government had charge of all the railroads and the Government could not make the revision that was expected there. The lease to which I refer is the transaction shown on page 48 of Respondent's Exhibit 5, which lease is dated August 1, 1916, and is from the St. Joseph Stockyards Company to the St. Joseph Belt Railroad. The date of expiration was July 31, 1938, and the rental $26,500 per year. I have marked on it "Old Lease of Belt right of way canceled by No. 49" (T. 390). The new lease referred to at No. 49 appears on page 49 of Respondent's Exhibit 5, the rental being $60,732 per year. This lease was presented to us for our inspection. When we valued the Belt Railroad property the lease shown on page 48 was in effect. We considered that rental in arriving at the value of the Belt Railroad property as it had its bearing and we also considered the conditions under which that rental had been continued by reason of the war. As to whether we regarded it as too small a rental for the property it was at a percentage basis of the return less than we valued the property. We did not capitalize that rental in order to arrive at the value of the Belt Railway property (T. 391).

I knew nothing about the new lease and I am sure Mr. Atkinson did not until it developed in our investigation of the value of Respondent's land. We then found that it was based on our valuation. The old lease carried a provision for a revision of payment of rental. I don't just recall the exact amount. It had been suspended on account of the war conditions and had not been carried out literally. With reference to my previous statement that "There could be no very considerable sized packing plant except for the [fol. 464] facilities of stockyards, nor could there be successful stockyards without packing houses" I meant that the public stockyards are necessary to the maintenance of any considerable size packing house. In a general way, but not intimately, I am acquainted with the Fowler Packing Company at Kansas City (T. 392). There is one of the largest public stockyards in America at that city. I do not know how much of its livestock the Fowler Packing Company purchases on that stockyard. I do not know whether it purchases all of its livestock there but it wouldn't be far remote. I do not know whether it purchases any of its livestock there. We have an institution in St. Joseph, the Seitz Packing Company, a small concern which buys all of its livestock on Respondent's stockyards and trucks it over to the Seitz Abattoir. I am not acquainted with the Cudahy Packing plant across the river from St. Paul, Minn., nor the Hormel Packing Company at Austin, Minn. (T. 393). I am not acquainted with the Northern Cooperative Packing Company at Grand Forks, N. D. I do not know the Omaha Packing Company at Chicago by that name. I assume that there are exceptions to all rules. I assume there may be cases like the Seitz Packing Company in St. Joseph that may be on the outer edge of the big institutions. I have been to the Rath Packing house at Waterloo, Iowa (T. 394). There are facilities for handling livestock at Waterloo but I do not know whether there is any public stockyards there but there are stockyards facilities, railroad facilities, by which stock is handled at the Rath Packing house.

Which of two adjoining lots, one having a one story store building and the other a three story building with stores and office on it would be the more intensively used would depend entirely upon the business which occupied them. Banks are very intensive improvements and nearly all of [fol. 465] them are one story. Possibly next door to the

bank may be a ten story department store. It entirely depends upon the occupancy and the purpose for which it was erected and used. A two story bank may be just as intensively used for the purpose for which it was constructed as a ten story department store (T. 395). To determine the question of intensiveness of use I would have to survey each piece of property and go into the neighborhood and ascertain conditions generally as I did relative to Respondent's property. There are no arbitrary rules to be laid down that are invariable as to the value of the property. One of the best rules when a piece of property is at its highest and best use is its rental return. That is the finality of the value of a piece of property. When asked if its rental return would be based largely upon the income that could be made on it witness stated it ought to be eventuated into that condition (T. 396). I do not think the packing house land at South St. Joseph is put to a more intensive use than the stockyards land. They are both at their capacity when they are both serving the highest purpose. The income per square foot on the packing house land may involve greater money but I do not know about net income as it may also involve greater cost of operation.

While I regard a general survey of the City of St. Joseph as of value in making the appraisal of Respondent's land, I didn't attempt in any direct way to reflect in my values the element of the number of school teachers and pupils and things of that kind, except in so far as the facilities for health and good living for the 3,500 employees in the stockyards add value. As to whether in arriving at my value of Respondent's land, I calculated on the basis of an annual rental of $60,702 for the Belt Railroad property and capitalized that at 6% and obtained the value of about a million [fol. 466] dollars with the result of 30c per square foot, I will say that my value of that property was made prior to the lease and I think they took my value more than I took theirs but the figures used in my testimony are not meaningless in that respect (T. 397).

Redirect examination:

When asked if the stockyards company had based the rental in the Belt lease on Mr. Mack's appraisal would the result have been much different, witness stated that a hasty recapitulation of the two appraisals shows that adding

Mr. Mack's zones together and dividing by five makes about 30c. Thereupon the witness was excused (T. 398).

Recross-examination:

In Interstate Commerce Commission Valuation Docket No. 785, I testified (T. 417) that:

"We have been exhibited a lease on the land under which the Belt Railway Company operates. It was originally for 30 years from 1908 and expired in 1938. This is an old lease. It provides for a readjustment of payment in 1918. We are informed that on account of the Federal Government at that date being in charge of all railroads of the Nation, that there was consequently no change made in the payments at the termination of that ten-year period, and that now, there can be no further change in rental of 1928. At the present rate of lease, this rental is on a basis of $26,500 annually, plus the taxes, chargeable to the land, considering that there are 78 acres in the (T. 412) whole tract. This nets about 3% annually on the land value of $900,000.

'Q. Why did you use 3%?

A. For the reason that in the investment of many large estates, it is to be considered fortunate indeed if the whole of the estate for all of the time would net a 3% income. This was equally true in St. Joseph in 1908, as it is today' " (T. 413).

[fol. 467] As to whether I regard the 3% as a fortunate income now on large estates, I know of a number of estates that I would be mighty happy to handle at 3%, and I know of a number that get more. I make investments. In the last couple or three years, the rate of interest has been much higher than it was seven, eight, or ten years ago. You cannot borrow call money at the bank nowadays at less than 8% interest. We are loaning money on real estate security at 7%, small loans (T. 417). That is 7% net to the investor.

It was in May, 1926, that I testified before the Interstate Commerce Commission in Valuation Docket No. 785, as above quoted.

FRANK M. ATKINSON, being first duly sworn, testified in substance as follows:

I reside in St. Joseph, where I have been a real estate operator for 43 years within 100 feet of my present location. I was once a member of the school board for two terms, was the first president of the Real Estate Exchange in St. Joseph, and have served the city as postmaster under the administration of Presidents Harrison, Cleveland, McKinley and Roosevelt.

My business is strictly real estate business at this time although I have placed a million dollars on real estate without loss to a single client. I have owned for a great number of years pieces of real estate in all parts of the city, buying and selling and scalping the market for quick returns. I have built and sold 75 homes in different loca- [fol. 468] tions, all within the city limits of St. Joseph (T. 399). As an agent I have sold more than 3500 pieces of real property in the city of St. Joseph. With J. W. Brocket and Charles Betts I purchased the holdings of the St. Joseph Terminal Company. For a great many years I have been the favored agent of the St. Joseph Light, Heat & Power Co. In recent years with William E. Spratt I have served the city in condemnation proceedings when the city hall was purchased and the park and boulevard system was acquired, involving more than a million dollars. The jury awards in the confiscation proceedings allowed within $20,000 of our valuation awards after a hard contest. Mr. Spratt and I represented the city in the contest over the purchase and condemnation of this property. With William E. Spratt I valued the land owned by the St. Joseph Gas Works and also for the St. Joseph Water Company (T. 400). With William E. Spratt I valued the six trunk lines and the Union Terminal holdings in St. Joseph. For 25 years I have kept up with all sales placed on record in this county as published in the St. Joseph Courier. It has been my custom for a great number of years when the least bit confused to set down locations and from once to twice each week look over such properties that I might keep well posted. I have advertised my sales in the public papers and have made semi-annual statements of sales which once equalled $330,000 and verified the statement by publishing names of grantors and grantees and the loca-

tion of the property sold. For 25 years I have specialized in advertising to give, for modest fees, expert opinions and advice on the value of strictly St. Joseph real property that would pass current with merchants, bankers, and other individuals. In that high endeavor in the little world in which I live I stand alone in such advertising. I feel I have been measurably successful now and for a long time [fol. 469] past in that, my principal business. Making appraisals from time to time and furnishing expert opinions has been my principal business (T. 401). I have specialized in it and no other agent ever has, with the possible exception of William E. Spratt & Co. I have at times consulted with William E. Spratt. While I have kept steadily in view the rule that I would be on safe ground in placing values on this land that would mean that the owner would not have to sell and also that the purchaser would not have to buy, I personally have felt that the value of real property depends largely on what is in the mind of the prospective purchaser when he purchases the property. There is, and can be, no invariable formula in the appraisal of real property. As an illustration, since this case started I read in the Scriptures the following: "The time has come and the day draweth near; let not the buyer rejoice nor the seller mourn." This to my mind is preferable to the old song that we all stand on "A willing seller and a willing buyer," that has been worn out. I have been an appraiser in the settlement of many large estates (T. 402) such as the Francis estate, the Donovan estate, the James McCord estate, the Hax estate, and others and was one of three employed to appraise the Irving Weihl estate (T. 403). Together with William E. Spratt within the last sixty days I have appraised something more than 200 feet of vacant ground bought for future expansion purposes by the St. Joseph Tablet Company. This brought us to the inescapable conclusion that property held for such purposes has to our mind a value far in excess of like property which is not held in expectancy.

Together with Mr. Spratt I appraised the land owned by the St. Joseph Stockyards Company as of June 30, 1929. I have heard Mr. Spratt's testimony and have ex- [fol. 470] amined and am familiar with Respondent's Exhibit No. 4. I agree with the values set forth on this exhibit. They were determined by Mr. Spratt and me

(T. 404). I agree with what Mr. Spratt has said in respect to the appraisal. In addition I would like to add that in the light of my experience I feel and have felt that this south end and the stockyards are an integral part of St. Joseph and in the law of supply and demand I have only given stabilized values as so many pounds of sugar and coffee for one dollar. I feel that either by expansion or by other industries all of the real estate holdings of the St. Joseph stockyards will be absorbed for industrial purposes during the life of many now middleaged men. I am depending on drawing on my reserve of 43 years' experience as a real estate operator in this community and standing on my motto of giving every man a square deal in every transaction of the 3500 sales that I have made as before stated.

I have in no sense been the partner of William E. Spratt. Each conducts a competitive business along the lines best suited to him. Serving with Mr. Spratt in this appraisal I think it quite unnecessary to repeat that heavy hitting real estate outfielders' statistical information. I concur with him and jointly we are responsible for the values placed on the stockyards holdings in zones and finally totalling (T. 405) a sum equal to $1,900,363.90. I am one of those who believes that the accessibility, desirability, and adaptability of this land and surroundings of the present stockyards holdings, all summed up and totalled, peculiarly and particularly appealed to the elder Swift as a 100 per cent location, not to be found here or elsewhere. In my opinion this almost alone prompted the Swift interests to plant packing houses on the rock of ages in St. Joseph, despite the fact of the city being wedged in between the fast growing cities of Kansas City and Omaha. [fol. 471] However ideally located or perfect the setting may be, after assembling this land and the cost of filling the land, putting in water mains, electric lights, and sewage system and other tremendous expenditures have much to do with my opinion as to the values of this land for the specific purpose for which it is being applied, I think, forever. It is well to remember in considering surrounding values, that if I had considered reflected values on Illinois Avenue alone, or too seriously, I would have placed higher values on this land. I fully realized that the stockyards

made Illinois Avenue and that Illinois Avenue did not make the stockyards. Brought up to the highest and most expensive development for which this land has been applied gives it in my opinion values fully equal to those placed on it by the appraisers for the St. Joseph Stockyards Company. These great going concerns, assembled and made suitable for the conduct of a stockyards business, have prompted me (T. 406) to wholeheartedly and enthusiastically adopt the theory of Wm. E. Spratt in his illustration that refers to the sound, dependable work horse. In summing up, with my conscience as my guide and depending on my general knowledge, and considering the importance, value, and magnitude of these great going concerns, and realizing that no exact formula can be laid down in the matter of real estate values, I feel that for the specific purpose of the stockyards' upbuilding and further development and expansion, no greater setting on the face of the earth will or can be found in St. Joseph or elsewhere comparable to the land on which these plants are located. Therefore, for the reasons just set forth I feel unbending in the view I take as to the values agreed upon with Mr. Spratt and which developed from sharp differences of opinion, ironed out finally to a good understanding. I find [fol. 472] that Illinois Avenue leading to the packing houses, a main retail street with splendid business concerns, is a congested thoroughfare that supplies all classes of merchandise to a community of 15,000 people, habituated to do their trading on this street. It is such a live thoroughfare that I have had to park my car several blocks distant from the Exchange Building, this bee-hive building of office help. The magnitude and staggering volume of business done at the stockyards, the great water tower or reservoir standing as the watch dog on St. Joseph's Mount Pelee on the east (T. 407), should be and is an persuasive appeal to other industries seeking locations where fire and unusually strong police protection has been provided for their coming. These packing houses and allied industries, located as they are on the west side of 15,000 people in happy, paid for, or soon paid for, homes and fine schools in my opinion has builded in perpetuity, and that of itself was and is a strong factor in the opinion of values that I have submitted here.

Cross-examination:

I know W. L. Mack of South St. Joseph. I respect his opinion and have not hesitated to consult him. The respect is mutual and he consults me. As regards Zones A and B in Respondent's Exhibit 3 as the best land in or about St. Joseph for a stockyards (T. 408), in my opinion it is probably the only location. The stockyards would simply furnish service to the packing houses. I mean the whole land is the only desirable location upon which to erect a stockyards as the Swift interests would if we did not have one. In agreeing to a value of 30c per foot on Zone A, I had in mind the highest state of development to which that tract can be put and that I considered to be for stockyards. We were asked the value of the stockyard company's holdings as of June 30, 1929. Then as now [fol. 473] was located on this land a great active going concern, the St. Joseph Stockyards Company doing service for the packing plants. Assuming that the stockyards company should, out of a clear sky announce that they would shut down for keeps, such an appalling calamity, with our present mortality, in our wholesale houses, we would throw up our hands and say that the old home town was on its death

Question: "I gather from that that you would consider that under such circumstances property values would not be nearly as high as they are now."

Answer: "I would have to think that that is so in the realms of, I might say, the hypothetical. I just cannot think of it from any standpoint of that sort."

In my opinion it would be a catastrophe, appalling and terrible.

As to intensity of use as an element in land value we stand on the broad proposition of valuing land based upon its use for its highest, best, and most useful purpose. Whether a lot in the middle of a block in the business district of downtown St. Joseph, having on it a ten-story department store, would be more or less valuable than an [fols. 474-496] adjoining vacant lot of the same size used as a parking place for hire, would be a matter in expectancy. That is to say, the store might be rented at a very high price or rental value and the other might be absorbed in the law of supply and demand within 24 hours for the

same or as high a purpose. (T. 411). I am sure I would regard the vacant land as being of a higher value than just what it could make as a parking space. I might say that sometimes as parking stations lots net the owner more than when used for three-story buildings and ten-story buildings.

I worked with Mr. Spratt in valuing the land leased to the Belt Railroad Company for use in Interstate Commerce Commission Docket No. 785 (T. 412), but did not testify before the commission in that case. (T. 414).

As to whether it would be fortunate if a large estate could be invested at a 3% net income I would have to think it over. If Mr. Spratt made that statement it would have a great impression on me to study about it (T. 415) but I would not care to pass on it without further thought. Things of that sort are pretty serious. I do not handle investments for estates. I have dodged that all my life and declined to serve as administrator in the handling of estates or to do any rental business. In the old days we used to lend a great deal of money but in the latter days we do not.

[fols. 497-509] Used and Useful Property

J. O. Barkley, a witness called by respondent, being first duly sworn, testified in substance as follows:

I reside in St. Joseph, Mo., and am vice president and general manager of the St. Joseph Stockyards Company and have been for the past 16 years. I have actual control over all the operations of the company. I am the man the directors have designated to be in active charge. In the years I have held that position I have become familiar with all the activities of that company. Outside of our own specific operations, I have visited all the other important yards from time to time and made observations there. (T. 496). A number of these yards are our active competitors and I thought it was my business to keep in pretty close touch with them.

I have read Government Exhibit 5C which was prepared by Mr. Christensen. I did not hear his testimony. (T. 497). I have noticed in Government Exhibit 5C that Mr. Christensen classifies the facilities of a stockyard company into general and outside facilities.

[fol. 510] Zone 1, Transit House

In order to consider the necessity of a hotel, such as the Transit House at South St. Joseph, we must take into consideration the history of the hotel. At the time these yards were established, it was found that hotel facilities were most essential to accommodate patrons of these yards, and, being unable to induce outside capital to invest in the facility, the yards company constructed and operated the hotel known as the "Transit House" until recent years, [fol. 511] since when it has been leased to private individuals at a nominal rental. The class of patrons served by this hotel is a farming element that will pay only nominal prices for hotel accommodations. Our location, being three miles south of the city of St. Joseph, makes it most inconvenient for patrons coming here during the night to take advantage of the prices of hotel accommodations afforded by the city, and we feel that it is a duty for the yards company to (T. 523) provide this facility at South St. Joseph, inasmuch as we could not induce private capital to do so. Furthermore, the stockyards company, of necessity, should have some sort of control over the operators of the hotel to insure the proper conduct of the hotel in keeping with the character of the other business conducted by the stockyards company. The class of people patronizing the hotel is practically the same as in former years, except that they are coming in trucks now, instead of by trains. The majority of the patrons, I am informed, arrive at the hotel between 12 o'clock midnight and three o'clock in the morning. (T. 524). The hotel people inform me that 90 per cent come in between those hours. The hotel keeps open all night to accommodate these people. A truck man can leave his truck in the stockyards, and walk across the railroad tracks and go to bed, if he wants to. That is the practice at this time. In reference to whether it is necessary for the stockyards company to own this hotel, I will state that I have tried to make myself believe it wasn't, to get rid of it, but, when we discussed the disadvantages we would be placed under if we did not afford this facility, we have felt that we had to continue it until such time at least as other hotels come in and take care of the situation. We are very unfortunate, and I don't know that we are more so than at other stockyards, as to the class of eating houses [fols. 512-548] and rooming houses that (T. 525) congre-

gate around a livestock market. Most of them try to make their revenue by means that we could not endorse. In other words, I would say they were very disreputable, and we feel it is necessary to afford a facility that people can go to, a respectable, first-class place of that character, and be taken care of.

[fol. 549] Transit House

With reference to the Transit House, I stated in part that the hotel was built back at a time when there was need for a hotel down there near the stockyards, that it was used by people who came to market with the livestock, and that in recent years the use of it has changed to the extent that most of its patrons now come from those people who drive truck loads of livestock into the yards, and those truckers are both owners and non-owners of the livestock they haul. I rather think the commercial trucker predominates. I believe that more and more it is becoming a commercial trucking proposition but I understand that a great deal of our territory is tributary to two or three other markets, (T. 891) and either the owner of the trucked-in livestock or the commercial trucker would naturally go to a place where he gets some accommodations. Without the necessary facilities at many of these competitive points they would naturally lose a great deal of business to the point that is more attractive. Our strongest competition in the truck business is Omaha and Nebraska City. The stockyards at the latter is not public but a private one owned by Wilson & Company who operate a packing plant there. I do not know whether they have a hotel there. There are hotels right in the same vicinity as the Kansas City stockyards. There are no hotels at South St. Joseph except the Transit House (T. 892). I do not know of any stockyards except Chicago, St. Joseph, East St. Louis, and Pittsburgh which maintain hotels. I am not very familiar with the hotel arrangements at those points other than St. Joseph. When the Transit House was built nearly thirty years ago there were no automobiles used. Facilities for getting uptown were very crude, almost impossible at times, on account of lack of properly paved [fol. 550] streets. Respondent leases the Transit House for $100 a month. The patronage there is not of sufficient volume and class to stand a higher rental. If the Transit House were not there I think it would be good business

for respondent either to build a hotel like it or induce someone else to do so (T. 893). I think it is necessary to have a facility of that kind there that can be operated along respectable lines. There is no other hotel there. You will note a good many signs "hotel" but they could not be classed as hotels when you look into them. They are brothels or right on the border of it. I do not think the truck drivers would want to go to places of that kind. A good many of them have been robbed who have tried it, so the report is. The objection to these truck drivers driving their trucks on up into St. Joseph and patronizing the hotels there is that the bulk of them get in here during the night, after midnight, and to get a place to park uptown would be a problem with a stranger. They would have to find a place, the class of hotel that they would like to patronize on account of the prices. I do not know of any of those cheap hotels uptown that are night and day hotels. The Transit House charges for room without bath about 75c to $1.00 and for room with bath I think it is $1.50, but I am not quite sure of that. These truck drivers do not patronize the dining room there to any great extent. I understand they take a good many breakfasts there but I am never around there in the mornings and I am not very well posted on that patronage (T. 894). If the Transit House should burn to such an extent that it could not be repaired I do not think there would be any question but that it would be rebuilt. A great many of these truck drivers make two trips a day to the market. Those which come early would probably go after a second load and come back to go to bed. For its class of patronage I regard the Transit House as [fols. 551-555] a first class hotel. It is way above the average of a country hotel in appointment and service. It is an absolutely clean and respectable hotel. I think ordinarily the rooms are pretty well used (T. 895). There are sixty rooms in the Transit House.

[fol. 556] Going Concern Value

L. R. Howson, a witness called by the Respondent, after being duly sworn, testified in substance as follows:

I live in Chicago, Illinois, and am a consulting engineer. I am a member of the firm of Alvord, Burdick and Howson.

I graduated from the University of Wisconsin in Civil Engineering in 1908, receiving the Bachelor's Degree in Civil Engineering, and four years later, for work done subsequent to graduation, I was given the professional degree of Civil Engineer (T. 539). I am a member of the American Society of Civil Engineers, a member of the American Society of Mechanical Engineering, the Western Society of Engineers, American Waterworks Society, and Illinois Society of Engineers, and others of smaller importance. Since 1908, when I was graduated from Wisconsin, I have been continuously in engineering practice. Prior to graduation, and for a short time thereafter, I had been in the employ of the Burlington Railroad. In the late summer of 1908, I entered the employ of the firm then known as Alvord and [fol. 557] Burdick, who specialized in utility and municipal engineering, and the work in which I have been continuously engaged since that time consists of all classes of municipal and utility engineering, beginning with the preliminary surveys, carrying through the designing supervision of construction, supervision of operations, and the appraisal of utility properties, specializing particularly in water supply. The work, however, includes flood relief, sewerage and sewerage disposal, and all types of utility, and hydraulic, and sanitary engineering work. I personally have appraised a great many utilities throughout the country (T. 540). I have testified on these appraisals before many of the Public Utility Commissions of various states, including Indiana, Illinois, Wisconsin, West Virginia, and Missouri and in a number of Federal Court cases and in some state courts on questions of value and rates. I have given a great deal of attention to the computation of the item known as "going value." As a result of my connection with Mr. Alvord, the senior member of our firm,—Mr. Alvord was one of the early utility appraisers,—and immediately after the Kansas City case in which the Court outlined the principle of going value, Mr. Alvord, with other engineers, attempted to work out some methods by which the Court's conception of going value could be measured. As a development of that there was first worked out in the Dubuque, Iowa, case—I believe in 1898,—there was developed in those preliminary stages what has since been called the comparative method of the "Alvord Method of Computing Value." I personally have computed going value and presented it

in well over fifty utilities, embracing waterworks, electric plants (T. 541); I believe four stockyards cases; the Detroit, Buffalo, St. Paul and this present case at St. Joe, and I also made the computation some three years ago for [fol. 558] the Denver yards, but never presented it. I have also made it for a number of railroads, and have presented it before the Interstate Commerce Commission in their behalf; I believe about five different cases before the I. C. C. I computed going value in a case which reached the Supreme Court. I put in all the evidence in the company's behalf in the Bluefield Waterworks and Improvement case, both as to physical values and to going value. In that case the Commission and the State Court allowed a specific item for going value of approximately ten per cent of the plant value. That case was appealed to the Supreme Court on the basis of reproduction value figures, and was remanded back by the Supreme Court on account of insufficient basis for rates, and was again valued by the West Virginia Commission with an increase in total value, I think, of 51%, and the inclusion again of 10% going value (T. 542). I believe it is just as practicable to compute going value, which in a reproduction estimate is the cost of reproducing the business, as it is to compute the cost of reproducing physical property having the same background of experience and knowledge of the factors affecting the business and its reproduction as must necessarily be available in computing the cost of reproducing physical property.

I have been asked by the St. Joseph Stockyards Company to compute the going value of that company as of June 30, 1930, and have made such a computation. It is contained in an exhibit which is marked for identification Respondent's Exhibit No. 8. I was asked to compute this going value some two months ago (T. 543). I made certain investigations which consisted of visiting St. Joseph to renew a familiarity, which I had acquired with the plant in connection with going value computations made two or three years prior for the St. Joseph Belt and the Union Terminal and to bring that data up to date and secure the more recent [fol. 559] facts relative to the business of the company and the features influencing it. Respondent's Exhibit No. 8, which is the result of that investigation, consists of 40 pages of which the first half is a general description of going value and the principles underlying the computation.

Q. Now, will you, Mr. Howson, take your Exhibit and briefly sketch through it and indicate the various things that have particular importance in the Exhibit, page by page, more or less indexing the Exhibit (T. 544)?

Counsel for Government: In order not to delay the proceedings, counsel for the Government at this time enters objection to the witness reading from Respondent's Exhibit No. 8, for the reasons which will be stated when the Exhibit is offered in evidence. The objection will go to the Exhibit and not to the fact of reading from it. In other words, I just want to be sure to cover the ground that we object to this Exhibit, and we naturally would object to reading from it just the same as we object to the introduction of the Exhibit iself.

A. The first page is simply a letter of transmittal, the subject matter covered therein being more specifically dealt with in the latter pages. Beginning on the second page is a discussion of going value and what it is, which leads up to a short definition of going value which is as follows:

Going value is that element of value of a property which represents a difference between its structural value and the value of a property as a whole with its developed income, organization and established business, and that going value is dependent or arises (T. 545) from the fact that: first, a property cannot be instantaneously created; second, that without established business a property would be practically valueless; and third, that property cannot be created [fol. 560] and provided with an established business without creating values outside of the physical structure. It is necessary to compute going value in connection with the reproduction of a property, as the property is not completely reproduced until the business, as well as the physical parts, are reproduced. Accordingly, as outlined on page four and summarized thereon, when reproducing a property as today we have to again consider the expenditures that are directly necessary to establish anew the organization, or indirectly necessary to compensate for inadequate revenues in re-establishing the property. The factors essential to a reproduction estimate of going value are outlined, beginning on page thirteen. One starting his computation of going value by the comparative method must have the following data:

First, the cost of reproducing the physical property as of the date of inquiry; second, how much time in the near future it will take to rebuild the plant, that is an engineering question and has to be estimated every where whenever any engineering construction is undertaken; third, how much time it will take after the physical plant is built and ready to operate before it will have a full line of clients, or customers, and fair normal or proper revenue; and, fourth, how rapidly this business (T. 546) will be acquired, or, in other words, how much businss can be readily secured, how much more can be secured with a reasonable expenditure of time and effort; and, finally, how much of the business of the present company can only be attached by great effort and considerable outlay in cost, if at all. It is also necessary to know the value of money properly secured, and the value of money used in the particular business under consideration; in other words, fair return. It is also necessary to have a knowledge of the recent income growth of the business that is under consideration. Having these data, it is then practicable through the forecasting and comparison of two sets of accounts to compute going value. These [fol. 561] two accounts are: first, the income and operating account of the company, as it now exists, forecasted into the reconstruction or reacquirement of revenue; and second, an exact similar set of accounts for a plant not yet conceived, but an exact duplicate, exactly similar in its physical make-up, and in its ultimate business capacity during the period when the physical plant is being reconstructed and the business rearranged. A comparison of these two sets of accounts reduced to present worth, as of the date of valuation or the date of the computation, gives a measure of the going value of the property by the comparative method. It can be (T. 547) visualized in this case by assuming that there is an investor ready, willing, and able on June 30, 1929, the date of valuation, who desires to enter the stockyards business in St. Joseph. His first procedure would be to call upon the management of the present yards, tell him of his desire to go into that business, and ascertain from them if the property can be acquired. They place a price on it which we are assuming is the cost of the physical plant plus their measure of going value. The prospective purchaser takes an option at that price, he then employs an engineer to tell him what it will cost to reproduce that

property. He, the engineer, estimates the physical cost of reproduction and advises his client as to the results. The client, or the prospective buyer, then returns to the manager of the stockyards company and tells him that he is advised that the property can be reproduced for an amount considerably below that mentioned in the option. The management of the yards tell him that they are selling more than a physical plant, they are selling a plant with an established business, not only with the capacity for earning, but one that is actually earning. The prospective investor is then confronted with two alternatives, he may either buy [fol. 562] the existing plant at a price including its going value in which case he immediately (T. 548) steps into the present revenues, or he may decide to build an exactly similar plant, which over a period of time will develop earning capacity equal to that of the existing yards. Assuming he takes the latter course, it will take him a year to build the plant. Obviously, during that period he will receive no revenue from it; the only revenues being from income or idle capital plus that previously allowed as lost interest during construction. Then after the plant is finished, which we will say can be accomplished in one year at a cost estimated as the reproduction cost of the property, he will find that during his year's interval much of the receipts of the yards will have been diverted to other yards, and can only be reattached with considerable effort. By intensive work, however, he assumed that after a period of years all of this business, or its equivalent, can be reattached to the yards, and if at that time the prospective investor, or the builder, as he now is, calls in an auditor and asks him to make a comparison of his financial structure under this building program, as compared to what it would have been if he bought the yards, he will find that the net revenues will have been less than they would have been had he purchased the going or operating yards, by an amount which is the amount computed for going value; that is, the amount he could have afforded to have paid, in addition to the cost of reproducing the physical plant and been even (T. 549), whichever course he would have pursued. That, as I see it, is a measure of the going value of this property by the cost of reproduction or comparative method.

All of these computations must necessarily be reduced to present worth as of the date of the valuation, because a dollar's earnings two years after the date of valuation [fol. 563] is not worth a dollar as of that date. I have used recognized tables reducing present worth by 6%. That concludes an explanation of the first half of Respondent's Exhibit No. 8.

Beginning with page 20 the balance of the Exhibit contains a detailed discussion of the actual computation of the going value of the St. Joseph Stockyards Company (T. 550). I shall now explain the computation there contained:

The figures for the basis, or the bases, of this computation were secured from the company's estimates of reproduction cost depreciated, and from the books of the company so far as operating accounts are concerned. The appraisals of the physical property figures were furnished to me by Mr. Kosters, and they have been used as a basis of this computation. I now understand that there is a slight error in those figures of approximately $20,000.00, due to some adjustments made prior, I believe, to this hearing, but which does not affect the going value computation only to a minor amount, less than a thousand dollars.

The effect of such a difference would slightly increase the going value as herein computed. In view of that I think my computation is fair.

I thought it unnecessary to make any change or recomputation on that account. The appraisal of the land was furnished to us by a real estate expert employed by the stockyards. We have also been furnished, and I have taken, many statistics as well from the books, detailed statistics of income and operating expenses of the stockyards company for the past six years, and numerous data relative to the livestock receipts since the opening (T. 551) of the yards. Have also been furnished data relative to the origin of shipments by Mr. Carroll, the traffic manager of the yards. The going value computation is made as of the same [fol. 564] date as the physical cost of reproduction, namely June 30, 1929. The computation is based upon a period of one year, beginning with June 30, 1929, and ending June 30, 1930, required for the physical reconstruction during which time the stockyards facilities would necessarily be suspended and the receipts now coming to the St. Joseph

yards would necessarily be diverted elsewhere. In this computation of going value there are some credits to the starting plant in the form of interest, interest on idle investments, interest on expenditures made during the year, and also, as well, the item of interest during construction, which has previously been added to capital account, must be credited to the starting plant as a revenue under this computation. In this computation I have accordingly credited as a revenue of the starting plant the allowance for lost interest made by Mr. Kosters, of $84,299.00, for structural items, that being the depreciated amount, and $106,986.00 for land, a total of $191,285.00, which is a revenue to this starting plant. The computation of going value by this method, which is an estimate of the cost of reestablishment of an income is largely dependent in amount upon the amount of income of the business to be acquired and the time required for its acquisition. It is therefore necessary to ascertain the facts relative to the income, its growth, the sources from which it is derived, and the factors affecting its recovery. During the past five years the (T. 552) receipts of stock at the St. Joseph Stockyards have varied from a minimum of 49,640 cars in 1927, to a maximum of 60,116 cars in 1924, the average for the last five years being 54,275. All of these figures express drive-ins as equivalent carloads. There has only been one year since 1913, that is, in the past sixteen years, in which the receipts have been less than 50,000 cars. I have considered the business to be reproduced, or being reproduced, to be 54,275 cars.

[fol. 565] The facts relative to the recovery of revenue were necessarily secured, or best secured, from those familiar with the business and the factors which influence it; order to secure my basic data on this point I interviewed a number of men who have been familiar with the business of the yards and the factors influencing it for a great many years. I talked to Mr. Carroll, who has been connected with both the stockyards and the Belt Railway as traffic manager, and who has been during that time largely devoting his efforts toward inducing shippers to come to these yards. I also inquired from Mr. Vant, who has been secretary and treasurer of the stockyards for many years, and from Mr. Barkley, who has been manager of both the Belt Railroad and the yards for many years. Also interviewed individually four of the best informed commission men in the yards,

men who were selected for diversity of points of origin of receipts and who would, therefore, give me, as I felt, a typical cross section of receipts and their recovery. I asked each one of (T. 553) these,—well, first, I asked Mr. Carroll to make an analysis of the points of origin of shipments, and asked him to divide them into three zones, the first zone to include the area within a hundred mile radius of St. Joseph; the second zone to include the area between two concentric circles whose centers are St. Joe and whose radii are 100 to 350 miles respectively; and the third zone to include the area outside of this second zone, that is, the area further removed than 350 miles from St. Joe. The analysis of the receipts shows approximately 40 per cent from the first zone, that is, within a hundred miles; 25 per cent from the second zone, and 35 in the third zone. I understand that these figures substantially check with the results of a very detailed survey made by Dr. Dozier for the Department.

I then asked each of these commission men who was inter- [fol. 566] viewed individually and without prior knowledge of the questions to be asked him, to state, expressed in percentage, the receipts which could be recovered in the first year, and at other stated intervals, from each of the three zones. Their opinions as to ultimate recovery checked very closely, in fact, at five years, at the end of five years, all estimates fall between 75 and 79 per cent recovery. There was slightly more variation in the early years, which could be, and which is, correctly interpreted as a reflection of the areas from which the individual commission men largely derive their business. The composite rate of recovery of business, as expressed (T. 554) by these men, is shown on a diagram appearing in page 29 of the report. The lower line on the right half of the diagram, labeled "Receipts of the Comparative Yards, Average of Five Estimates," is the average as they were given to me. I had four commission men and three stockyards employees, Mr. Vant, Mr. Barkley, and Mr. Carroll, had previously discussed this question on recovery of receipts, accordingly, I gave their opinion the weight of but one, whereas I gave each of the commission men the weight of one, making five total, although there were seven of them in fact.

Counsel for the Government not being sure that the previous objection goes to statements of the witness that are not read from the Exhibit objects and moves to strike

so much of the testimony as states what he was told by employees of the Stockyards Company and commission men, because it is hearsay (T. 555). Whereupon counsel for Respondent moved to strike the entire testimony of witnesses Christensen, Dozier and Bachmann on the ground that all of such testimony is based almost entirely upon hearsay. Counsel for the Government's objection was overruled and both motions to strike denied.

[fol. 567] Referring again to the diagram on page 29, there is a second curved line shown on the right part of this diagram, slightly above the one just referred to, which is labeled "Adopted Recovery Curve." This curve is the one used as the recovery of business by the stockyards, rather than the composite average. It shortens the total recovery period from eight years to five years, and for periods after the initial year of operation adopts a recovery of receipts about ten per cent, more or less, more rapid than the composite of the five estimates, and more *rapid than any estimate made.*

With the rate of recovery established, it is possible through a study of the present income and operating accounts to estimate the income and operating costs of the starting plant during the period when it is reacquiring the business at the rates shown on the diagram on page 29 of Respondent's Exhibit No. 8 (T. 556). The total estimate, estimated operating accounts, are shown in Table 1, on page 32 of the Exhibit. These figures are based upon an analysis of the same items on the books of the company in the past few years. On page 33 is a diagrammatic representation of the computation of going value, this diagram showing the gross income and operating costs as estimated for the comparative yards, and by cross hatching on the diagram the income lost due to the reconstruction of the property and the reestablishment of the business.

Computation of the amount of going value is made by a comparison of the two sets of accounts, one of a continuation of operations by the existing company during a five year period as compared to the operations of this starting company during the same period, when it will have been reconstructed and its business reacquired. The difference between the two, reduced to present worth, is the measure of going value. The computation is shown in [fol. 568] Tables 2 and 3, which are pages 36 and 37 of this

exhibit. The figures in column — of Table 2, are the net income from operations of the starting property, as shown in the last line of Table 1, page 32 (T. 557). It might be helpful to trace one year's computation through. Take, for instance, the year 1932. On page 32, Table 1, the equivalent car receipts are shown to be estimated at 46,000, produced an income of $920,000, and with operating expenses of $581,010, giving net after operations but before depreciation or fixed charges of $338,990. That item is carried forward into Table 2, page 35, for the year 1932. In the second column, net income from operations, the total investment in the comparative yards as shown in column 3, is the valuation of physical plant and land, plus interest during construction, the figures for which were furnished to me by the company. The 4th column there is based on a growing increment of $579,393 up to that date. This, added to the investment in the comparative yards as shown in column 3, gives column 5 amounting to $4,951,535. This amount, subtracted from the figure at the head of the table of $5,040,000, which is the entire capital assumed to be in the hands of an investor when he starts to build, being enough to cover less interest and going value, leaves the amount invested at 4%, shown in column 6, as $88,465. This figure, subtracted from the similar figure in the year above, gives $147,502, the amount withdrawn by the investor during that current year. Now, on the amount which stays in the bank during the entire year, we credited him with 4% interest (T. 558), as shown in column 8, and the amount which is withdrawn during the year we assume to be withdrawn at a uniform rate, giving him 2% on average bank balance or 1% on the amount $1,475,000, as shown in column 9. In 1932, therefore, he received a total of interest of $5,013, [fol. 569] which, added to the $338,990, net from operations gave him a total income, as shown in column 12, or $344,003, which figure is carried forward to page 37, column 3, as the income from the comparative yards. Now, had the purchase of existing yards, as indicated for that year, instead of being $344,003 would have been $426,580, leaving the cost of income of existing yards of $82,577. Inasmuch, however, as 1932 is in the future, a dollar then is not worth the dollar it is of the date of valuation, this figure is reduced to present worth of 6%, and amounts to $65,409. That amount is the going value increment for that year,

and that added to the total going value increment of the 3 years previous of $579,393, gives a going value increment up to the end of 1932 of $644,802. That is simply a typical year. That process is repeated for each of the years. The going value assumed at the beginning of this final computation was $667,858. The going value is computed as $666,666, showing a resulting difference of $1,192, or 1/5 of 1%, and the computation is not carried to greater refinement (T. 559).

Before starting my computation I had to assume some particular amount of going value and I worked it through and tested it out and if my test showed the assumed amount was materially wrong I would have to start all over again. When I finally obtained a result which is close to the figure from which I started, for the purpose of the computation, that result can be assumed to be correct because the computed going value will not check the assumed going value until the assumption is correct. This is the cut and try method, as we term it, and when the two do check, then the computation, or the original assumption, is then correct (T. 560).

After the computation is made it is a simple matter to summarize or check the computation. It is all on one sheet [fol. 570] which is somewhat easier to check. This has been done in Table No. 4, appearing on page 39 of the Exhibit, which is the investor's status, under Case A, in which he buys all existing yards. As set forth, his net revenue of $426,580 each year during the six year period is reduced to present worth, and it shows that if he bought, he would in the course of that period have a revenue which, reduced to present worth as of the date he was making his decision, would have been $2,097,630. If, however, as outlined in Case B, he decides to build a new stockyards, he will get less revenue during this period, and the revenue from unemployed capital, less interest and operations for each of the six years, reduced to present worth or valuation, would have totaled $1,430,967. The difference between his net revenues under these two alternatives is $666,663, which checks the going value, as computed, within $3.00.

Now, going value by this method is, to some extent, a reflection of the rate of return. In other words, with a given investment, the value of the attached business is greater with a good paying business than with a poor one,

up to the point at which fair return is exceeded. I have accordingly run through computations on a couple of other bases, so that if a basis of physical plant value were to be taken (T. 561), other than the one which I have taken, there might be some measure of going value. On page 40 of the report I stated that if this going value computation had been based upon earnings sufficient to produce 7½% instead of 4½% return, after allowing approximately 4% for annual depreciation, and the 4½% rates are approximate at present and constitute the basis of this computation, based on the physical figures which were given me, the amount computed for going value would have been approximately [fol. 571] $1,000,000 instead of $667,000 as herein computed. That is a measure of the increased value of a 7½% over 4½% on the return, and the same return for same plant value. Then, if this computation had made use of the present earnings or a total valuation of $3,600,000 instead of approximately $5,000,000 as used in this computation, the amount of it for going value would have been approximately $675,000. I have not computed this going value by an adjustment of earnings to a fair return basis. I have figured the going value based on the earnings as reflected in the Company's records, and based upon the company's figures as to plant valuation (T. 562).

The present computation amounts to approximately 13¼% of the total value of the physical plant plus going value. Exclusive of going value it would be 15¼%. Had the computation been figured on a 7½% return, or a revenue sufficient to produce 7½% return on the total value, the percentage would be approximately 18¾% of the total value, including going value, or 23% of the value of the physical plant. Counsel for Respondent offered in evidence the Exhibit which had been marked Respondent's Exhibit No. 8 (T. 563).

Counsel for the Government: The Government objects to the introduction in evidence of Respondent's Exhibit No. 8, and at this point renews its objection to all of the foregoing testimony of the witness and moves to strike all of the foregoing testimony of the witness, for that the Exhibit and the testimony constitutes neither statements of fact nor of opinion, in the legal sense of the latter word, but theories, surmises, conjectures, prophecies, guesses, legal conclusions, definitions which are in the province of the

courts to make; also, for that the witness is not testifying to anything in his previous training or experience which has qualified himself, as distinguished from any other well [fol. 572] educated man, to discuss theories and conjectures upon this subject; also, for the further reason that it appears from pages 24 and 25 of the Exhibit, and also from the testimony of the witness, that a basic element in the witness' computation of so-called going concern value is based, not upon any knowledge that the witness has or has acquired, but wholly upon opinions not facts, opinions, guesses, surmises and conjectures stated to him by certain persons who are named and certain commission men who are not named. Counsel for the Government (T. 564) respectfully states that the basis of his objection at this point is not to that common ordinary process which any investigator must necessarily use of asking some questions as he goes along, and which has been used by other witnesses who have testified in this proceeding, but to taking bodily the opinions of persons who have not been called to testify. The estimated recovery of receipts lies at the very basis of the computation. The witness has not pretended to know, himself, anything about how long it will take to recover these receipts. He is, therefore, effectively immunized against cross-examination, and it is a very important point, unless his informants be produced as witnesses.

Objection overruled, motion to strike denied (T. 565).

Respondent's Exhibit No. 8

This exhibit will be found in the volumes of this abstract entitled "Exhibits."

At the suggestion of the Examiner the names of the four men interviewed were given by Mr. Howson, they were Mr. True Davis, Mr. Thomas McKee, local manager of John Clay & Company, Mr. Austin of Austin, Hammil & Hoover, and Mr. Baker of Vallery, Baker & Bruce.

[fol. 573] In the investigation which I have made to determine the going value of the St. Joseph Stockyards Company I followed the same method as is used in estimating the cost of reproduction new (T. 566).

An engineer, either in estimating the cost of constructing a new property or in reproducing an existing property must have certain fundamental values. He must have in-

formation or arrive at a conclusion as to the time required for the execution of his construction program; he must ascertain the costs of materials and labor, and the availability of supplies of both that entered into his construction or reconstruction program; he must ascertain by inquiry securing all the information he can get, the character of soil he is likely to encounter; the differences he is likely to find in the execution of his program; and based upon all of the local information which he must necessarily secure in most cases by inquiry, he develops a construction program and an estimate of unit and total costs, and arrives at a conclusion as to the time and cost of constructing or reconstructing the particular property in mind.

That type of inquiry is the same type of inquiry I made in this case. In both instances one must rely upon facts they get from other sources (T. 567).

I am engaged continually in advising both public and private clients as to the cost and construction period of undertakings which they have in mind constructing. Within the last year we built, designed, and supervised the construction of three filtration plants in Texas; doing work now in Baton Rouge, La.; did water softening work in Florida, and doing work in Arkansas, Illinois, and Indiana and other States. It would be impossible to have a detailed personal familiarity with costs and conditions in each one of those places, and yet, by inquiry, we developed the information essential to the making of careful estimates [fol. 574] which will if those costs are borne out by actual construction later executed will furnish a check upon the accuracy of computations made upon just that kind of information.

Those computations are made every day by appraisal engineers. That is the usual procedure. Those who compute going value by this method follow the same procedure (T. 568). The method is used more largely, I think, than all other methods combined at the present time. In each and every instance the appraisal engineer has to find out from someone the rapidity with which the business will return. He fortifies himself with all the information he can get, and all the light he can get on the subject from those best informed, before he makes his computation. That is what I have done in this case. Then I increased the rapidity, as determined from my investigation, to the extent

indicated on page 29 of Respondent's Exhibit No. 8. I accelerated the total recovery of the business three years (T. 569).

Cross-examination:

I have been studying and testifying about going concern value for 15 years. My testimony in the beginning was substantially as it is now. I have always used this method. My partner, Mr. Alvord, originated this method, and I learned it from him. I have not carried on his method just as he developed it, naturally there have been some changes from time to time, some before and some after I began it. One important change is that in the early computation lost interest was not credited as an earning to the starting plant. That has been done for some years, I think, correctly done. To that extent, I think, the early computations were in error. That is the most important change. The manner of presenting it, the manner of set- [fol. 575] ting it up, has been modified from time to time in an effort to make it easily understood and the (T. 570) arithmetic more easily followed. The theory was first conceived by Mr. Alvord and another engineer named Bennezette Williams in 1898, I believe, in the Dubuque Iowa Water Works Case. It was very different then from what it is now. However, that was the beginning of the attempt to compute going value by the reproduction or comparative process. The theory has been refined practically continuously since that date, to make it more easily understood and develop it as we went along. Mr. Alvord is still living, and to some extent still testifies on this subject. During the last two or three years he has been devoting his entire time to the preparation of an exhaustive treatise on public utility valuation. For that reason he has not testified, I think, for possibly three years. He is also a hydraulic and sanitary engineer, and that is his specialty. Hydraulic and sanitary engineering comes under the general classification of civil. I think the training and experience of a civil engineer gives him a peculiar qualification for determining going concern value, as distinguished from the qualifications of mechanical or electrical engineers only in degree (T. 571). The civil engineer is fundamentally a builder and estimator. He must neeessarily be so because

everything he does must be built in the future. You cannot build or rebuild in the past. He is also daily an applied economist because the things he estimates he must later build, and that includes the financing. That is also true of the mechanical engineer, to a somewhat less extent. He builds of a different type than the civil engineer. The mechanical engineer makes his estimates and looks into the future in the same way that the civil engineer does, the only difference, I think, between them fundamentally is possibly in degree. I think all engineers, who are also builders, [fol. 576] are in a way applied economists. I think it is fundamentally a part of the profession of civil engineering to operate businesses after they are built. In fact, the utilities of today are continuously drifting more toward the operation by scientifically trained men and engineers (T. 572). I do not mean operating in the form of employing all labor and going through all of the operations. We do not do that. It is supervisory operation only, consulting operations. I mean, for instance, that we design the water works and then continue with it as a sort of supermanager, advising on policies. It is not anywhere near as big a part of our business as construction, but we do it very frequently. Sometimes after we have built a water plant we advise on the advertising campaign, and prior to the building of a water works plant, where clients ask us as to whether or not such a plant should be built and what it will cost, we almost invariably include in that estimate the prospect for it being a remunerative one and how much or how long it will be required before it does become a remunerative one. That is part of practically all of our advice to clients. I have not had a similar experience with relation to stockyards. I have never built a stockyards (T. 573), nor planned one, nor advised a client as to the building of one. I never had occasion to estimate the receipts and income of a stockyards that actually was to be built.

In the 15 years that I have testified on going concern value, some of the cases have been condemnation cases and some rate cases, and in some instances I was acting for a private purchaser and in some for a public purchaser. I pursued exactly the same method in each (T. 574). I have been testifying in rate cases about 15 years. So far as I

know, as I now recall, courts have not expressed themselves as to what method they use in arriving at their conclusions, [fol. 577] but there have been specific allowances for going value in many cases with which I have been connected; that is, I have testified as to this method and then there has been some kind of an allowance made. In some cases it has been the amount I recommended, and in others it has not. I believe that the amount I recommended was approved by the Appellate Court in the Bluefield Water Case, but I am not entirely clear on that because I have testified at Bluefield four or five times from 1915 on. In that case the Supreme Court of the United States did not mention that specific item but referred the whole thing back to the Utility Commission on a confiscation issue (T. 575). In other words, they reversed the lower court, but the Supreme Court of Appeals in West Virginia specifically referred to the inclusion of going value in the amount of approximately 15 per cent, which, according to my recollection, is the amount to which I testified.

This is not just a theory to be used in rate cases, but if a client came to me with millions of dollars and wished to buy the St. Joseph Stockyards and desired me to tell him just what the stockyards and business was really worth, what he could afford to pay for it, I would use this very same method in ascertaining that. I would advise him that he should pay some $666,000 more than the physical valuation. In fact, I have done that in the past year several times on water works properties, several of which have been transferred on the basis of that recommendation. They were transferred to private corporations, one of them recently transferred from a willing seller to a willing purchaser, both private companies, with an inclusion for going value of 15 per cent. In that case I pursued the same method that I have pursued here (T. 576). In the case of a water utility, about the only people that know anything about the company's business are the men in the [fol. 578] company. There is nothing comparable to the commission men. Accordingly, I made this same type of inquiry from the manager and the distribution superintendent, and I ascertained the facts relative to how long it takes to get business on their extensions, new mains, and on that data made the computation as to the value of busi-

ness. In that case I did not make my calculation only on the actual data as shown by their records as to how long it took them to get new business on extensions of the mains, and that was a part of what I considered. I looked up that data relative to specific extensions, insofar as it was available, and considered that in connection with the statements and opinions of the distribution superintendent and the general manager of the property who had been there well over thirty years.

As to whether there was any comparable data to examine in respect to the St. Joseph Stockyards (T. 577), I secured this information by the same kind of inquiry. I found, for instance, that the St. Joseph Stockyards had, through its traffic manager, for illustration, gotten a lot of stock from southwestern Kansas, as I recall, by getting or inducing, I believe it was the Missouri Pacific, some railroad, to put on train service which did not, prior to that time, exist, and that enabled them to build up a business in that territory that had, prior to that, not been there, so that I made inquiry along those comparable lines. I made inquiry to determine what effect the putting on of the train had on receipts and whether they continued to come. I cannot tell you how rapidly the receipts did grow by that train. I am simply giving that as an illustration, effecting my use of the information that was furnished to me by these men. I did not make any computation based on that train. I merely had the information from the traffic manager, that after that train was put on, receipts increased. That is the same [fol. 579] way that I did with this water company. I found out that after they laid the main, they would get some business off of it, and it would take them sometime before they got all of it, got saturated (T. 578). The patrons of a stockyards are the ones who will pay interest on the money, if we assume that the rates are always going to be able to yield a fair rate of return. In a sale and purchase transaction, the seller is naturally seeking to obtain all he can and the purchaser to pay as little as he can. I have represented the purchaser in some cases and the sellers in others, and in the past year have been agreed upon by both parties. My procedure is just the same in any of those events. Just as the purchaser is interested in a low valuation, so are the patrons of a public utility,

(T. 579), and the owners of such a utility are interested in a high valuation, and I think that interest would extend to the officers as faithful trustees for the owners. As to whether, without any bad faith, the natural tendency would be for the owners and officers to take a roseate view which would increase values, I should say quite the contrary was true, if we are talking about business. Possibly they would take a roseate view as to what is here and pessimistic view as to the difficulty of recovery. I do not know that I exactly sense your question. In most rate cases in which I have testified, the utility was contending for higher valuation than was the regulating body. I think that is just a natural tendency. In my investigation to determine the time it would take to recover the receipts of the St. Joseph Stockyards, I consulted the patrons of that yard only through the representatives who sell their stock for them (T. 580), who are the commission men. I think the commission men are interested in the amount that their principals pay the stockyards. I did not interview any representatives of the great livestock associations. Eventually, [fol. 580] it is the views and opinions of the shippers of the livestock which governs where the livestock will go, although that opinion is very largely modified, I think, by others. However, eventually the shipper sends his livestock where he wants it to go, but he frequently changes his mind, even enroute. I think the shipper's opinion as to what he would do under the circumstances I assume here would be material and interesting, but those shippers number many thousands with an individual narrow viewpoint (T. 581), representing a small locality. I am endeavoring to get a typical cross section of this producing area as affecting this yard, and it was for that reason that I selected commission men as having a contact with the entire producing area rather than one railroad station. The shippers have great national organizations, there have been shipping organizations organized. I assume that those organizations have managers who devote their time to the study of just such questions as that, but as to that I do not know. I made no investigation to determine that at this market. I cannot tell you what commission firm on the St. Joseph market handles the greatest volume of receipts. I could not tell you on total receipts of all sections whether it is

the Farmers Union. I do not know whether they do or do not (T. 582). I do not know whether the Farmers Union represents the livestock producers or not. I did not make any attempt to find out. I had no contact with that organization, and I do not know whether they have a broad knowledge of the subject or not. As to my knowledge of the broad knowledge of the four commission men, Mr. McKee, as I recall it, is the St. Joseph manager for John Clay, and as such, I think, handles something like 55% of all the sheep that come to this market. His business is largely derived from within a radius of one hundred miles [fol. 581] of this market, so far as cattle and hogs are concerned, and from the third zone, that is, the area away out, Colorado sheep, mostly. I understand that in sheep he has a very broad clientele. Baker's business is largely in the first and third zone-. He does not get much from the intermediate zones. Davis, about equally distributed, he told me that they are in all of these zones, and I outlined them to him on the map. They are not all sheep men. Davis' business is largely cattle and hogs, not very heavy in sheep. John Clay is represented by McKee, and in this last year handled about 55% of all the sheep coming to this market, I am told. Mr. Austin's business is very largely in the second and third zones, pretty much all classes (T. 583). I think they handle all species of livestock, each of them handles all species. I asked Mr. Barkley to get me the four commission men who most completely covered the territory, did the most business, and were most familiar with the factors affecting what was bringing that business to this market, and what would keep it here. I told them that the receipts of the stockyards had been classified as between three zones, which I indicated to them,—that is the first one a hundred mile radius, the second, the area between one hundred miles and three hundred and fifty miles from St. Joe and the third all outside of that line. I told them that what I wanted to know was,—first, if the stockyards were to be closed down for a year, how long would it take to completely recover all of that business or its equivalent, which I told them was some 54,000 cars, and told them its distribution. Second, how much of that, after getting that ultimate (T. 584) point, how much of the receipts could we recover from each one of the three zones at the end of

twelve months' time, or in one year's business,—and asked them to express that in percentage, and then I asked them [fol. 582] to express the same thing at later periods by zones. Those figures were then tabulated and expressed in cars, and percentages from the various zones transferred to carloads. I do not recall that I asked any of them if he had ever operated a stockyards. I asked them how long they had been in the commission business, how extensively their business covered the areas, how much of their commission experience had been in the St. Joseph yards. I did not ask any of them if he had ever been traffic manager at the stockyards, and I did not ask any of them if he had ever seen stockyards closed for a period of one year and then reopened, but I asked them if they knew anything about the effect of the flood at Sioux City upon their receipts, which temporarily closed that yard many years ago, and tried to get such information as I could that would show some indication from their own experience of a somewhat similar situation, although for a less extended period. Speaking from memory, I would say that the flood at Sioux City was around 30 years ago (T. 585). None of the commission men I consulted were there. They did not know anything about it except what they had heard. None of them had ever heard of a stockyards company closed down temporarily. They could not give me any information from their own experience as to similar conditions. As to the closing of the Sioux City stockyards, I am speaking simply from recollection, it is my recollection that shipments were diverted for a short period only, a matter of maybe a week or two.

None of the commission men had ever heard of a case where a group of people decided to build a new stockyards and the old stockyards gave up the ghost and went out of business. What I have said about the commission men applies to the officers of the company, except, of course, that the officers of the company have operated a stockyards. [fol. 583] They had discussed this jointly among themselves rather than individually (T. 586). I think neither Mr. Barkley nor Mr. Carroll nor Mr. Vant ever had any experience with starting a brand new stockyards and trying to recover the business of the old stockyards that had gone out of business. I do not think that the assumption that I made in respect to a new stockyards starting to be

built and the old stockyards going out of business has ever occurred in actuality in its entirety. I have no personal familiarity with any data or experience of mankind upon the construction of a new stockyards under present conditions as large as the St. Joseph stockyards and the attraction of business to it. So far as I recall, I have not discussed that with the St. Joseph men. I think there is a lot of human experience back of my assumption, but it is not the exact counterpart of the situation as outlined. To illustrate, I think, I know of no case where a water works has been wiped out or laid idle for a year while somebody built another one, and yet I know I can compute the going value of a water works without that experience and arrive at a conclusion which a willing purchaser and a willing seller include in their sale agreement. I would liken this estimate of the recovery of receipts to an engineer's estimate of the cost of constructing a physical property, and I say that one is no more difficult, no more speculative than the other (T. 587). Thousands of properties have been constructed in the future from estimates made by engineers. Some engineers may use certain formulae for computing cost of labor in making appraisals, but we do not. We estimate each job on the factors that we find in the particular locality covering the output and cost. As to whether we use the union wage scale, we use what we think is going to be used when the property is built, and we estimate on the [fol. 584] basis of the cost of labor in the community as we think it will be at the time of construction. We base our prognostications of the future only to some extent on the conditions at the time we are making our estimates (T. 588). We always survey those organizations with respect to conditions then existing, and as they will, so nearly as we can forecast, exist during the construction period. In determining what that labor will be during the period of construction, we make reference to the experience of the past. I find out everything I can about the past and the conditions that affected that case in the past. I do not necessarily, in making a construction program, use the price prevailing as of the moment. As an illustration, cast iron pipe a year ago was selling at $27 Birmingham base. My judgment told me, although that price had been in effect six months, a study of the factors influencing that price told me that that was liable to change and would change.

Accordingly, work that was estimated during that period, I didn't use $27, I used $38 to $40, and subsequent events have justified that. Had I not done that, my estimates would have been a third low on that item today. When we have made estimates in the past and the property has been constructed and the actual cost developed, we always compare those things. That has all added very materially to my fund of useful information in making estimates for the future (T. 589). I have had no such similar guiding star with respect to the recovering of stockyards receipts. I have never gone through a stockyards business reconstruction, nor has anyone else to my knowledge.

One can get the market price on materials by inquiry, and also the price trends, although the price trends on cast iron pipe a year ago had been down since 1920, but, substantially, that did not indicate that it was going any further. In fact, a correct analysis of that situation would show that the trend, as indicated, was not a correct trend. [fol. 585] We can ascertain today just exactly what cast iron pipe is selling for, and then can use that as a basis for determining how much above or below that we think it will be selling later on (T. 590). Personally, we do not have any such present figures with respect to the recovery of receipts at a stockyards. That is why I endeavored to secure it from the best informed people that I could. I do not know of anyone who does have such actual figures just exactly comparable to the present price of cast iron pipe, but the figures are just about as certain. I think it is fully as certain because cast iron pipe in the last year has taken a 50% change in price. The very fact that *that* all of these men, interviewed individually, had a range very narrow, men of experience, indicates to me that their opinion was correct within a smaller range than that given on cast iron pipe. I have checked that on water works, where we have told clients, when we were preparing estimates, how much they should allow for going value. The plant was built and some years later they checked what the cost of developing that business had been. It checked very closely with figures made beforehand, all of the same kind of information, as the stockyards computation has necessarily been made. I did not say that these men I consulted about the recovery of stockyards receipts had more definite information on that subject than could be obtained today as to the present

price of cast iron pipe today (T. 591), but I say that there has been a much greater fluctuation of the prices of that cast iron pipe in the last year than was reflected in the individual estimates or opinions of these men. We cannot ascertain the present rate of recovery of livestock receipts to the head. As to whether there is such certainty in respect to the present recovery of livestock receipts as there is in relation to the cost of cast iron pipe, there are published prices on cast iron pipe, and there is a range of [fol. 586] a dollar or so a ton on what you can buy it for, depending on the attractiveness of your order.

I found that all of the estimates that I got on how long it would take to recover the livestock receipts were quite close together. I think the fact that those figures are close together should inspire a feeling of security in the accuracy of those figures (T. 592). I endeavored to select men who had no common interest, that is, I selected the three company men and then the commission men, whose interests are, in many ways, diverse.

I made this same computation for the stockyards at Buffalo. There was a substantial agreement there. In all of the five yards in which we have made this inquiry, and in two other yards, for which I have made the same inquiry for switching railroads, that is, total of seven yards, I have found a very close agreement between those conversant with the industry as to what would happen if the yards were wiped out and what would be required in the way of re-establishing the business, and that was true in the estimates upon which the computation was made on the St. Paul Stockyards.

St. Paul was the first one of these cases, and there were not as many men interviewed there as in the subsequent cases, that was a pioneer case (T. 593), and while I do not recall the figures, there was not a very wide diversion of opinion there, as I recall it. It was some four years ago. I think my information there came largely from, speaking from recollection, *from* Mr. Kube, the traffic manager; from Mr. Good, the manager; from Mr. Luening, who at that time was manager of the Armour Packing Plant and who had been at Fort Worth during the period of the construction of those yards and was familiar with the event incident to attaching business there. I also consulted with the Government representative there, Mr. Haskell, and I

[fol. 587] think, on that first investigation, I did not use commission men's estimates. That is my recollection. There may have been others that I consulted in addition to these four, but I recall those. The opinions of those I consulted at St. Paul were in close agreement. Without having the figures I do not know whether I would characterize them as close or remarkable. In stating that the commission men were interested in the rates, I mean that they would be interested in rates that would enable them more easily to attract shipments to this market (T. 594). That is, they would be interested in having lower rates.

I did not state that in all these water works or other utilities whose going concern value I had estimated had actually gone out of business and a new plant been constructed. I stated, or meant to state at least, that the water works were in the same position as the stockyards in that respect. I do not know of any water works that had been wiped out and the plant and its business reproduced (T. 595). Some of these water works which were purchased by private investors upon my estimate of going concern value are the Paducah, Kentucky, Water Works, which was transferred at exactly the price I set. The Baton Rouge, Louisiana, Water Works has, within the past three weeks, had an offer exactly at the price I set. The Lexington, Kentucky, Water Works was transferred as a result of an appraisal which I made for both interested parties. I do not know the exact amount of the price. All of those transfers were from one private party to another private party, and the purchasers therefore had no interest in the plant. I cannot tell you how those prices compared with the net earnings of those utilities, capitalized at the market price of money at the time, because I did not figure them that way (T. 596). As to how the price compared with the market value of the outstanding securities, water works securi- [fol. 588] ties in isolated companies are purely a local proposition and in most cases there is no market, other than the cities in that immediate vicinity and as a usual thing, they are very closely held, most of them by families or estates. The market prices that have been paid for these stocks, in the cases I mentioned, in addition to assuming the bonded indebtedness, I think have been as high as $400 a share and as low as about $40 a share. As to how those prices reflect what was being paid, in fact there had been

no sale, not in either one of those properties, I do not believe there had been a stock transferred for years, so that I know of no way in which one could compare that price paid with so-called market value, as I understand it. I know only in a general way whether the net earnings of any of those companies represented a fair return upon the price paid. I know that one sold for materially more than its capitalized net earnings, and without having made that computation I would say that others were producing a substantially fair rate of return on the price paid. I have followed the history since that sale of the one which sold for more than its capitalized net earnings. It has not been making a fair return upon the sale price. It is operating under a franchise which does not expire until 1934, and I think there will be no change in the rate structure until that time (T. 597). Our accounting for an investor buying at a price upon which he could not obtain a fair rate of return is because he ultimately expects to get more than he was getting at the time of purchase. He expects future income to make up for what he is now losing.

I think the matter of computing this recovery of business for the water works and the stockyards is substantially the same. As to whether I regard the element of uncertainty as equal in each of those enterprises, I think there is more competition in the stockyards industry than in the water [fol. 589] works. In fact, the water works is a virtual monopoly where it exists, and there is no substitute for water. Under modern conditions it is practically impossible to live in a city without patronizing the water supply. In estimating water consumption, with respect to an existing plant and its extension, there is little to estimate other than the growth of the city where that water is to be consumed (T. 598). The basis of that is population, modified by a study of the uses of water in the community, and as they may be increased or decreased. We have average figures of communities of all sizes and conditions, but each city is a study in itself because the water consumption in various cities will vary anywhere from as low as 50 gallons per capita to an excess of 300 gallons per capita. There is no shipper so situated in the United States but what he could send his supply of livestock to another yard, if he was willing to sacrifice the advantage of coming to the St. Joseph stockyards. The advantage he would have

to sacrifice would be that which makes him come here now, which is what makes this a market, the advantages of outlets for his stuff, the advantages of railroad services, of freight rates, and in case of trucked in livestock the proximity to the market usually enables him to truck it here rather than freight in somewhere else (T. 599). The fact that he comes here is, I think, the answer to the question as to whether he would not have the same advantages if he sent the livestock elsewhere; that is, he considers there are advantages here or he would not come here. I do not mean that it takes no effort on the part of this yard to bring livestock receipts here, I mean that the fact that this yard is furnishing a service which is accepted by the shippers, indicates that the market is furnishing a service which satisfies the shipper better than, or has attractions to the shippers outweighing the attractions of others to which he [fol. 590] might go. If this yard was closed temporarily some of the shippers would simply be biding their time until they could come back and reclaim the advantages. Others would, in the meantime, have tested out some other yard and found that it also had some advantages, and they would be brought back with difficulty. They would recognize their own best interests, but some of our best interests are due to lack of testing other yards (T. 600). Other yards may have, during that time, if the shippers were diverted from this yard for a year, freight train schedules improved and trade routes established, which do not now exist, and which have some bearing upon the selection of these yards by the shippers.

I know some of the principal factors which cause a shipper to select one yard rather than another. Some of them are breadth of market, personal contacts with commission men, personal contacts with people in his own locality, whose views somewhat influence his own; solicitation for service and a demonstration of the service that is offered by the various stockyard companies; train connections, which will get the stock there with a minimum of shrink, and I have even heard experienced shippers argue about the water supply that the cattle and stock drink while it is in the yards. By breadth of market, I mean that a shipper consigning stock to a certain yard must be assured that there will be sufficient buyers there to insure his getting every cent the stock is worth on the day it reaches the

yards. By service rendered at the yards, I mean that promptly upon receipt the stock is unloaded, yarded, supplied with the desired feed and bedding, and the interest of the shipper watched until the property is transferred to the buyer. I regard both the market price and the service rendered as essential. (T. 601)

I have never attempted to express service in dollars so [fol. 591] I could not make the comparison as to whether the market price or the service rendered is the greater factor. The shipper raises livestock in order to realize dollars and cents and service has a bearing upon that as well. I know only in a general way the territory in which the freight rates are favorable to St. Joseph. I think all stock west of the Missouri can go to any Missouri Valley market at equal rates. That is, I can not tell where the break is or just how wide an area that covers, but as a general statement at least, I think that is true for remote shipments. I can not tell you how far west of the Missouri that is apt to be the fact. (T. 602.) I have not made an investigation of those features except just as I have picked it up from general inquiry. I have no very definite knowledge about the freight breaking point or which market has the advantage in those respects and I do not so testify.

I would not want to compare the service in the various yards and if I desired I could only do so very generally. It would throw no light in dollars and cents on service as between various yards. As to whether I know of any yards where the service is better than at St. Joseph, there are other yards that have better transportation service to the yards. That is, it is easier to get the stuff to the yards than at St. Joseph. I think that is true of the yards on the principal through transcontinental lines.

I am sure market price is a big factor in attracting livestock to a yard. I have not evaluated to determine whether it is the largest single factor but I know it is very important. (T. 603) As I understand it the market price is made between buyer and seller. The packers are one set of buyers and I think they play an important part in the making of market prices. I can not say whether the receipts at any stockyards may depend upon a comparison between the market price at that market and at the other [fol. 592] yards. Undoubtedly over a year the market price and also the breadth of the market have something

to do with the attractiveness of the market to the shippers. I did not make any investigation in detail as to all the outlets for the livestock. I assume that the packers and the other outlets now available would take all the receipts that the company could induce to come back to the yards. (T. 604) My computation assumed that the packing plants would cease operations. Referring to the statement on page 10 of respondent's Exhibit 8 that "stockyards facilities are so essential to the operation of the packing plants, that if the stockyards were not functioning for a construction period of one year, shipments now consigned to the St. Joseph stockyards would be consigned elsewhere and would, with considerable difficulty, be induced to again come to St. Joseph," that does not mean all shipments. It means all shipments during the period of construction. In other words that no livestock would come to the packing plants at St. Joseph during the period of reconstruction of the yards. There are two packing plants, one owned by Swift and the other by Armour and they are both in operation. (T. 605) They represent large investments and during this period of reconstruction they would be idle. For a considerable period after the new yard opened it would be operating at less than capacity. It would naturally be to their interest to reattract livestock to this yard and they could pay for that livestock whatever they desired in competition with other markets. I know of no rule of law that would prevent that. (T. 606.) If the packers should pay a bonus for shipments to St. Joseph upon the reopening of the yards, that would, I think, tend to speed up recovery of shipments. In my estimate of recovery of shipments I make no specific estimate that they would pay a bonus [fol. 593] but I arbitrarily shortened the recovery period of eight years given me by those most familiar with the situation, to the five years shown on respondent's Exhibit 8 on page 29.

What I said about my assumption that the commission men would be in favor of lower rates at the stockyards was directed primarily to stockyard charges and not to their own charges (T. 607). I think the reduction of rates at a stockyard would make little difference in receipts but what difference it would make would probably be to encourage receipts. I have not investigated that line and what I have said in regard thereto is pretty largely an offhand opinion. It was given in reply to inquiry by coun-

sel for the Government. I do not know what has been the effect of a reduction in the commission charges at the Omaha market.

My rebuilding period is one year. That is to say, the new plant would be entirely complete and ready for operation within one year and it would be a duplicate of the present plant. (T. 608) I am assuming that it would not be ready to receive any livestock until the end of the twelve months' period and that no livestock would come to St. Joseph until the stockyard was complete. That is not merely an assumption for the sake of illustration. I think that is a condition that would probably prevail if this reconstruction program were carried into execution. I do not think the packing plants would make any arrangements to handle receipts until the new yard was ready to operate. I think they would wait until they are able to get their stock through the usual channels, and without the necessity of making large expenditures on their own account, which would later be worthless. I think it would be more economical for them to let their plants lay idle than to construct some temporary pens and unloading chutes. That [fol. 594] conclusion is not reached as a result of any direct comparison of costs but simply a belief that the packing plants would not make any major expenditures which would be useful for one year only. (T. 609) My estimate is based on one year. As to whether the stockyards would be absolutely complete at that time, those who make the reproduction estimate would have to testify. I have assumed that there would be a lapse of one year in the operation. Possibly the stockyards could put up some pens and begin receiving livestock before the Exchange Building was complete but that would be at increased cost. Construction and operation in any industry or utility can not be carried on simultaneously without incurring added expenditures. If some cattle pens and unloading docks adjacent thereto were constructed along Packers Avenue, it would interfere with construction operations on the east side of the yards if those structures were not located so as to be part of the permanent plant. It would increase the construction cost as well. I have not made any estimate of the amount of such increase. (T. 610) I think it would be impossible to build sufficient temporary pens and sheds not to interfere with the business at all, and not incur expenditures in excess of the going value, and by that I mean expenditures

in construction, in operation, and wasted effort. I think it would be impossible to build part of the permanent pen structure and put it in operation before you had completed the whole. It might be possible to throw some of those in operation as a physical thing, but I have had considerable experience in construction work and in placing the utilities in operation and we endeavor to get them into operation as early as possible. We do know, as every contractor knows, that when you overlap construction and operation procedure, you involve cost, excess cost in both, and ac- [fol. 595] cordingly, in most efforts, I would say, in practically all efforts, not requiring over a year for construction, there is little incentive to put partially constructed works into operation. I know in a general way the layout of the St. Joseph Stockyards. I have been over it but I am not fully familiar with it from memory. I know that the packing plants are strung along the west side of the yard. (T. 611) If my recollection is correct the Belt Railroad completely girdles the yards and has some tracks on the east side and along the north end and also along the south end. The tracks at those two ends are slightly fa-ther away from the yards proper than along the east side. I do not recollect whether the sheep barns are in the north end of the stockyards. (T. 612.) The construction of a sheep division and the placing of it in operation while the hog division was being constructed would be prevented by the fact that the most economical procedure would probably not be to do it that way. If this proposal, involving an expenditure of several millions of dollars, is built and ready for operation in one year, it means carrying on construction intensively and concurrently over a wide area. It should be started in a logical, orderly procedure which would make the least interference to the progress of construction. That is, it must be worked out on a construction program, coming back to the original point of the execution of a construction program, it can not be the same order of procedure as an operating program and in so far as those two conflict, as they must, if they are carried on concurrently, increased cost will be incurred. The principal conflict between the operation of the sheep division and the construction of the hog division would be that of time. The sheep yards can not be simply rubbed into position by saying: "Here are sheep yards." It takes time to build them and during that time progress should also be made on hog yards.

[fol. 596] This doubling of concentration in a small section will not give you double the progress. (T. 613) It would take a reasonable construction period to create this property as a whole or one major part of it. I think it would take substantially the same time to create the sheep division as the whole yard, if you are going to keep your organization at a normal cost. You can only concentrate so much men and equipment and so much construction in a given area without increasing the cost. (T. 614) The facts that the yard is all laid out on a single deck and surrounded by a railroad so material may come from all directions would be favorable factors. However, this yard is not all on single deck. There are miles of pipe, water, sewer, and that kind of thing underground which have to be done and the trenches filled before paving and that kind of thing. I do not say that could not be completed in one section of the yards so as to permit paving to start before it was completed all over. I say that the logical construction procedure would be to carry all types of construction along in an orderly way rather than concentration of any one small area. It is sometimes true that business property will be in operation before construction is complete, quite frequently true in relatively long construction periods,—very rarely true in periods of less than one year. (T. 615) Under the conditions here at St. Joseph with a one-year construction period I think one would be money ahead to lose all of the business of the yards rather than put part of it in operation before it was fully complete. That is based upon my experience of a good many years in various types of construction.

The figures used in the various tables in respondent's Exhibit 8 are based on figures taken directly from respondent's books. That does not include figures as to rate [fol. 597] of recovery of receipts but does include the income and operating expenses resulting from that recovery. (T. 616) The estimated receipts of the St. Joseph Stockyards are taken from respondent's books. Those for the so-called starting or comparative plant are not so taken. I do not mean that respondent's books now show what its livestock receipts are going to be in 1930. Its books show what the receipts have been from 1893 to date and from that I have estimated the figure for 1930. The esti-

mated receipts for respondent for future years is not shown in any table in respondent's Exhibit 8 but is shown diagrammatically on exhibit drawing No. 1, being page 29 of respondent's Exhibit 8, the horizontal line labeled "Average Receipts, present yards." That is equivalent to carloads, being carload receipts, plus trucked-in stock expressed as equivalent. (T. 617) That diagram shows, for illustration, that in the year 1925 about the equivalent of 55,000 cars of livestock came to the St. Joseph Stockyards. I do not think that figure includes livestock merely stopped for feed, water, and rest and which did not pay any yardage, but I can not state that definitely. This diagram indicates that there was a decline in receipts until the year 1927 when they had gotten down to 50,000 cars, and then they increased until the year 1928 when they were nearly 55,000 cars. That 55,000 cars, being the numerical average of the past five years, only four of which show on this diagram, I have used it as the basis of the computation. (T. 618) I have assumed from my study of the history of past receipts that the future receipts will be on a level, neither increasing nor decreasing until the year 1937. I have assumed that the average receipts of the present yards for the future period, covered by this computation, will average 54,275 cars per year. In so far as the computation is concerned my estimate does not go further than 1934. (T. 619)

[fol. 598] Respondent's livestock receipts, expressed in carload equivalents, have been as follows:

1921	50,950
1922	55,144
1923	62,828
1924	60,116
1925	55,000
1926	52,535
1927	49,640
1928	54,088

My conclusion is based on the assumption of an average of 54,275 cars over the 5-year future period (T. 620), but I did not undertake to determine for any particular year. I am stating what a study of the past would indicate as the average for a 5-year future period. So long as it averaged 54,275, no amount of fluctuation of any particular year would materially affect my computation, but if the 5-year

average were changed, it would affect my whole computation in proportion as the two figures vary (T. 621).

I have estimated that it would take the comparative plant approximately 5 years, if it was built, to recover the business which, at that time, would be enjoyed by respondent, if its continuity were not broken. If that period were reduced to three years, it would reduce the going value quite materially, though I made no computation to ascertain the amount (T. 622). Accuracy in estimating the final year, when the receipts of the two plants met, has a bearing of course in my theory. Table 3, page 37, of Respondent's Exhibit 8 shows that at the end of the first year, after the completion of construction, the going value has amounted to $431,891 out of a total of $666,666. In other words, by the end of the first year, after the beginning of operations 65% of the total going value has been incurred. If the entire period were shortened, every figure in table 3 would be [fol. 599] changed to some extent. The first figure, $155,528, would be unchanged if two years were lopped off the entire period. That is the loss in the year of construction. The 4th instead of the 6th figure would become the last, and the 97% of the going value, which occurs in the first four years of the six, that is in the first three years of recovery, would be changed to 100%, if the period were shortened two years (T. 623). The figure $644,802 would not be the final going value if the entire period were shortened by two years. There would be an accumulative change in the figures, and the final figure would be somewhat less than $644,802, though I cannot tell how much less without recomputing it.

After having made computations of this nature and they have been tested by time, I check up to determine how nearly accurate my original estimate was made, and I have had some very interesting experiences in that regard (T. 624).

I have had some very close checks indeed, and one that we followed through very closely, in 1906 or 1907, just prior to my connection with the office. Work was in progress when I was there, in fact, this report was made after I came. We were employed by the United States Steel Co. to lay out for them the town of Gary, Ind., including its water supply and sewage and municipal improvements. We were given a construction program as to when the mills, different mills would go into operation and based on

that, practically a forecasted population, we knew that we could get a certain amount of water from the sand around Gary enough to supply 10 or 15 thousand people. We knew we could not supply 100,000.

We accordingly reported to the steel company, recommending the construction at once, or outlining the construction at once, of a 6-foot tunnel, three miles out into the lake, although we told them we would not pay for same, [fol. 600] but we recommended their recognizing at that time a going value, or a lag in earnings on that investment, as it was at that time of about $150,000. In other words, instead of that tunnel costing a specific amount, they should provide that amount which was its estimated physical cost, plus $150,000, and that would be put out at interest. That was done, the tunnel was constructed, and 10 years later, in 1917, we appraised that property for the Gary Heat, Light & Water Co. and estimated the amount of going value by this same method outlined in Exhibit 8, and after that was done, the steel company auditors made a study to see how that checked. The figures, as actually computed or taken from their books and the agreement was very close. (T. 625). It is my recollection it was within $5,000 or so, very close. We have chances to check back in connection with many utility construction programs, and we advise our clients as to the necessity of providing for the cost of developing the business of new undertakings.

At the time I prognosticated the future need for water at Gary, the steel company had told us that they were designing for 100,000 people ultimately. It would require about a certain number of mills, those mills would go into operation at such and such dates, and as it actually worked out, it did not vary so much from that. I think in 1907, when we appraised it, Gary had probably 85,000 people. Gary had a very much more definite future than ordinary cities at their inception. As to whether it had a more definite future than stockyards, we are looking at the stockyards now in a reproduction, not as a new production, and we have a 40-year backsight here now. I thing that gives a very good idea as to what the stockyard business can be developed to in this locality (T. 626), so I think it is even more definite than an industrial city not yet started.

[fol. 601] I studied the record of how the stockyard receipts grew at St. Joseph, that is, just a statement of their

receipts from year to year. I have talked with men who are old in experience around the yards. I think a number of factors had something to do with the growth of the yards. I think that providing a market, taking over of railroad facilities by allied interests, active solicitation of the management, the character of service rendered, and the fact that an outlet was developed for such shipments as came to the yards were factors which had something to do with the growth of the yards. I think the yard started about 1893. At that time the livestock development in the territory west of the Missouri River was not so much small farms as it is now, although I am not speaking from experience as I was never west of the Mississippi River prior to 1893 (T. 627).

If I had made my computation in 1928, I think my average for the receipts would have been very close to the average I have now stated. That would be true of 1927, and I think of any period during the past 25 years. I would have taken certainly within 5,000 cars of the same amount and I think much closer than that. That means that receipts have practically been stationary for over 25 years.

I have checked back over one of my stockyard prognostications to see how experience had dealt with it. I found that in the case of the St. Paul yards the growth had been slightly less rapidly, I think, than I had forecast it, due to the outside buying which has come to be a factor in the four or five years since that forecast was made. I did not know at that time how outside buying was going to grow. I have not checked that recently, but I platted those points on my curve, which appears in that case as Exhibit 4, and I now find that the cars of stock receipts checked my estimate much closer [fol. 602] than I thought (T. 629). I have before me Respondent's Exhibit 122 in the St. Paul case entitled, "A brief description of going value, the comparative method, and its computation, and the detailed application of this method of the reproduction cost of property of the South St. Paul Stockyards, October 13, 1924," though I do not recall it by number. I am referring to Exhibit 4 labeled, "Total cost—stock received at South St. Paul Union Stockyards." I find that there has been a slight difference both above and below my forecast. That forecast was made in 1923. Since that time three years have been above my forecast and two below. In table 4 I forecast the number of cars for each

year at the existing yard. In 1924 the estimate was 72,000 cars, and there were approximately 82,000. The estimated figure should have included drive-ins and truck-ins all reduced to carlot equivalents. That was four years ago, and I cannot state definitely whether it did or not. At that time St. Paul only had a small percentage of drive-ins, which since have increased very materially (T. 630). The number of cars which actually came to the St. Paul yard in 1924 was approximately 82,000. I procured that figure from the annual report of that stockyard. In 1925 it was 90,000 cars against an estimate of 79,500. In 1926 the actual number of cars was about 96,000, and the estimated receipts 82,000; and in 1927 as near as I can read the platting, about 83,500, as compared to my forecast of 84,500. In 1928 the actual receipts were 80,000 cars, as compared with my estimate of 87,000. I haven't the figures of actual receipts for the year 1929 (T. 631). I do not think those variations are material. If they are platted up on the same diagram as Exhibit 4, it is a remarkable check. I think the figures of actual receipts at St. Paul for 1924 of 77,918 cars, 1925, 84,404 cars, 1926, 88,279 cars, 1927, 74,357 cars and 1928 68,560 cars, stated by counsel for the Government, are [fol. 603] undoubtedly exclusive of drive-ins, but I think even those figures are close to my forecast. There is one year right on the forecast, two above, and two below.

I find on checking that the average of the 5 years since 1923, as forecasted by me in that hearing, was 82,000 cars per year, the figures which you just read to me, which I think are carloads exclusive of truck-ins, average over the same period 78,700 cars; the average (T. 632) of the figures taken from the plattings which I made some months ago in St. Paul on Exhibit 4 which, if my recollection serves me correctly, include drive-ins expressed as cars, the average for that 5-year period is 86,100. In other words, my forecast is almost exactly an arithmetical mean of this figure, including the truck-ins, and this figure excluding the truck-ins.

In the foregoing computation I am assuming that the figures stated by counsel for the Government are exclusive of truck-ins and my figures exclusive thereof, but I should like to check that as it is from memory. If it should be that counsel's figures include truck-ins, I would regard it as close to my estimate, for it would be within about 4%,

and that difference would only slightly reduce the amount of going concern value that I estimated; and if the figures that were given to me at St. Paul as the actual receipts are correct, the going value would be increased by almost exactly the same amount as the figures stated by counsel would decrease it.

In the St. Paul report there is not any table giving the estimate of livestock receipts in head rather than in cars (T. 633). Exhibits 1, 2, and 3 in that report show an estimate in head diagrammatically. For 1925 I estimated apparently about 5½ million head of all species of livestock. I do not know how many were actually received that year. I was interested only in carloads. I have never checked [fol. 604] the number of head because the computations are all based on carloads (T. 634). My estimate of the total number of head of livestock at St. Paul for the year 1926 was approximately 5,700,000 head; 1927, approximately 5,850,000 head; 1928, approximately 6,000,000 head. The average disagreement over that 4-year period between those figures and figures read by counsel for the Government from Government Exhibit 13-A is 4½%. I would say, however, that those curves and these figures are nowhere used in my computation, which is based wholly on cars (T. 636).

My computation shows for itself that it is based on cars and not head. That is not because yardage is collected on a car basis. It is because a study of the income from yardage shows very little fluctuation from year to year, substantially a level line, and is taken as the one unit, which apparently, based upon an operating record, is most uniform. By income I mean gross receipts from yardage and feed.

Speaking from memory I used in reducing drive-ins and truck-ins to carload equivalents 25 for cattle, 70 for calves, 70 for hogs and 125 for sheep. I do not remember whether the same figures were used at St. Paul (T. 638). I obtained an average gross income average net operating income per car and worked those averages rather than the actual head figures. These computations of receipts of livestock are merely for the purpose of leading up to net operating income. In other words, the things I really want to compare and limit comparison to the existing yard and the comparative yard, is the per cent of their net operating income for

the various years in the future. Turning to Table 7 of my St. Paul report the second column—net income of existing plants, refers to the St. Paul Stockyards. I have not compared those figures with the actual results at St. Paul. I would not have reason to doubt the accuracy of reports [fol. 605] made to the Department of Agriculture by the St. Paul Union Stockyards in compliance with the Packers and Stockyards Act (T. 639) but as to the items which they cover, I do not know about that. The last line on page 15 of the paper entitled "Annual Report of the St. Paul Union Stockyards Company, South St. Paul, Minnesota, for the year ending December 31, 1928," says "Total income carried to page 10, $2,264,414.99". I think that is the total income but it is not comparable to the figures referred to in Table 7 of my St. Paul report. In my St. Paul report I took the income from all sources, and as compared to this $2,264,414.99, I find, by reference to a table in that report, that I had estimated $2,200,000 for that, so the difference of $44,000 on $2,264,000 is an agreement within 2% (T. 640). As nearly as can be read from the diagram, Exhibit 6, in my St. Paul report, the estimated gross income figure comparable to the $2,264,414.99 is $2,450,000. The table on page 21 of the St. Paul annual report for 1928 includes an item of expense excluded from my table, being depreciation of $148,846.81, and totals $1,637,796.31. Deducting the $148,746.81 leaves a figure of $1,489,050 as compared to mine as shown on Exhibit 6 of the St. Paul report as nearly as I can read from scaling, $1,490,000. The net operating income I estimated for St. Paul Union Stockyards for the year 1928 was approximately $958,000. I think that was before depreciation. If my recollection is correct, the depreciation on the two properties was deducted in neither case. In the St. Paul computation I estimated for the comparative plant there a net operating income of approximately $823,000. As shown on pages 10 and 21 of the St. Paul annual report for 1928 the net operating income is $775,364.00 (T. 641). That is before depreciation and is comparable with my figures.

[fol. 606] I make no distinction between going concern value and going value (T. 642). To my mind a going concern is a property which has gone through the construction stage, and has developed not only a capacity to earn but earnings. By earnings I mean net income, although the go-

ing plant may have going value and as yet, no net income. I mean that if the plant were neither making a net income or suffering a net loss it might have a going value and I also mean that the property which is built and just ready to start operations, if it is going to perform a real service, has a going value. Even though, at that moment, it might not have a remunerative income. I also mean a property in the condition that many utilities were in at the end of the war, when some of them actually operated in the red, still had going value. The comparative plant would have some increment of going value from the time it was finished because it would be that much closer to the time that it would have a remunerative (T. 643) income. By remunerative income I mean it would show net profits and the closer it gets to that condition the more going value it has. Even if it never acquired a remunerative business, if it is furnishing a service which is needed, the theory of the utility regulation is that it will be allowed to earn commensurate with the cost of service and the cost of performing that service, so that although at any particular moment or over a considerable period, such as I illustrated in the Lexington Water Case, a utility may have insufficient earnings, or no earnings, and yet have a going value, because it has earning capacity. That is not because the law will allow it to earn a fair return but because the community wants the service and is willing to pay for it. I know of instances that have no going value, or a negative going value. I could cite many of them, but they are the exception, rather than the rule, [fol. 607] and my point is that the earnings at the particular moment, do not, to my mind, measure the value of the business (T. 644). I mean that a business that has no net earnings, would have a going value and be a going concern. A plant that had consistently demonstrated its inability to make net earnings, and I assume that it could never make them, and I assume and am satisfied that it could never make them, such as a logging railroad, with the logs cut off, and decline or abandonment facing it, would in my mind have a negative going value and the total property value would be worth less than the cost of physical reproduction. In such a case the total property value would be approaching, or possibly scrap value. I would call such a railroad a dead concern or approaching it because it had served the usefulness for which it was built and the property would

be required to go through a great many lean years before another use would be sufficient to justify its operations. If it never had another use it would have a negative going value (T. 645). In the case of an interurban electric road running out of a city and serving suburban communities which over a period of years had become a demonstrated money loser the element of going value would depend entirely on the conditions. I know right now two or three lines that have been in that status for years and today are in fine shape, such as the North Shore Electric from Chicago to Milwaukee, or the marked improvement in the South Shore Line from Chicago to South Bend. It is not the status at the particular moment, it is its capacity for earning even more than the present earnings, but it is either its present or future capacity for earning that determines whether it is a going concern or one that is not going. Upon that, however, depends whether the concern is a successful going concern and has a going value or going concern value (T. 646). A going concern or a concern which has going [fol. 608] value, to my mind, means a business which has an earning capacity and is meeting a need in the community better than it can be met otherwise. By earning capacity I mean a capacity for eventual net earnings. Ordinarily I use going concern and a concern having going value as synonomous terms (T. 647).

In response to a request by counsel for the Government for comparable figures so as to contrast or compare the actual receipts at the South St. Paul Stockyards with those which witness had estimated, witness stated the following: "I have made no additional check of the carload receipts since yesterday. At that time, there was put into the record my estimate that is in the St. Paul Exhibit of the carload receipts for each of the five years, from 1925 to 1930. There was also put into the record a statement of carloads which were actually received, those figures being supplied by you, and I also put into the record taken from data platted some six months ago by me on one of my St. Paul Exhibits, the equivalent carloads which have actually been received, including truck-ins for the same five years. I have not checked those figures since yesterday. I have, however, checked the actual head received at St. Paul, as compared to my estimate of receipts at St. Paul for the three years 1926, 1927 and 1928, the annual reports for the

St. Paul Union Stockyards Company, covering these years being supplied to me by you. I find that the total head figures which you gave me yesterday (T. 648) substantially check for the years 1926 and 1927, except that I find 10,000 additional head in each year, which I think is probably an arithmetical error of 10,000 head per year. However, I find that for 1928, the figure which you gave me is 812,000 head below that given in the 1928 Annual Report of the company, so that the total head receipts actually received at the yards [fol. 609] at St. Paul for the four years, that is to say, 1925 to 1928, inclusive, instead of being 23,050,000, as I estimated in my Exhibit, would be 22,658,000 head. I think I can clear that up by adding this total covers the four years from 1925 to 1928, inclusive, the figures for only three of which, however, have I been able to check, as I have had the annual reports only for the years 1926, 1927 and 1928. This difference of 392,000 head amounts to approximately 1.7% of the total receipts during that period."

By referring to the Public Annual Livestock Report of the St. Paul Union Stockyards Company for the year 1928 I find that the number of livestock receipts shown in that report for that year is 5,823,894 head (T. 649). That would make some slight difference in my total. The total difference between my estimate and the actual receipts, instead of being 392,000, as previously stated, would be 386,000, in round numbers. Reading from the same report the total head of livestock received at St. Paul for the following years is as follows: 1924, 5,554,180; 1926, 6,143,643; 1927, 5,402,811; 1928, 5,294,488. Those figures include what is known as through shipments (T. 650). The number of head involved in those through shipments were for the year 1926, 268,220; 1927, 172,927; and 1928, 341,949. The figures read from the Annual Report of the So. St. Paul stockyards for 1928 include through shipments. I do not know whether such shipments pay any yardage. I may have known at the time I made my estimate on St. Paul but my computation assumes that there would be the same percentage of through shipments with the starting yards and with the going yards, in which case it would not make any difference whether or not they paid yardage. In my total items at St. Paul I included all shipments. I think I included through shipments throughout and I made no separation at St. Joseph (T. 651), but my opinion is that the

[fol. 610] inclusion of these through shipments would not change my ultimate result because we are comparing two properties having the same type of business, and the same distribution of business, that is, business that we are recovering is identically the business that is now here. Therefore, the per cent of the two on the same basis would give us the same answer. We would be recovering a business that did not pay any yardage as well as that which did and that is reflected in an average revenue per car, both of the going yards and of the starting yards. It does make a difference what figure is assumed for the receipts of the going yards because the receipts that are here have to be recovered. The difference in this computation is a recovery of revenue and it is a recovery of revenue under the same conditions of classification of receipts that produce that revenue in the going plant as in the starting plant. In other words, at St. Paul, as I recall it, I used an income per car of all classes of, I think, $28. Now, had I excluded from that the through shipments, the $28 would have been a different figure and it would have been a different figure as applied both to the going plant and the starting plant, and the net result would have been, I think, the same (T. 652). Whenever for any reason I change my figures as expressed per car as to the operating plant they automatically change as to the starting plant so it wouldn't make any difference what unit figure per car I used, the result would be the same (T. 653).

In response to request of counsel for the Government for a comparison of witness' estimated net operating income and the actual net operating income of the South St. Paul Stockyards for the years 1926, 1927 and 1928, witness said the following: "In 1926 the net revenue, as estimated in my St. Paul report, was $902,000; the actual, after [fol. 611] making corrections for some interest and depreciation items, was $1,053,549, a difference of $151,549, being an under-estimate of my figures, that is, my figures being an under-estimate of the actual for that year. In 1927 my estimate of the net was $929,500; the actual net, with the same corrections for interest and depreciation was $890,710, an under-estimate on my part of $38,790. In 1928 my estimate was $957,000; the actual, with the same corrections, was $858,899, an over-estimate on my part of $98,101. For the three years the net under-estimate was

$14,658, or 0.46 of 1% and as I stated yesterday and as the St. Paul report, itself, states, 'it is not an effort to estimate any particular year, but rather an estimate of averages', both in St. Paul, and as I testified yesterday, here in St. Joe" (T. 654).

I don't attempt to say what the difference would be in each particular year but I have attempted to estimate what the average would be over the period covered by my recovery of revenue forecast. Based upon those averages an average condition as specifically stated in the report I had actually stated down to the very dollar the going concern value for each particular year. The going concern value I reached is an accumulation of those annual figures. Comparing them with the actual figures I find that some of the actual figures are above and some below my estimate. We all know that livestock production moves in cycles.

Assuming that the present St. Joseph Stockyards had gone out of business and in the present year, 1929, a new yard was being built and the Secretary of Agriculture was holding a hearing to determine the rates to be charged by that yard when it began business in January 1, 1930 (T. 655), and I was testifying in such a proceeding as to going concern value I would compute it just as I do when I advise investors, or prospective investors, who are going to con- [fol. 612] struct other utilities. I would estimate the cost of physically reproducing existing structures, and make a study of the effort, and expenditures, and time that would be necessary to finance that structure into a remunerative business, and make a going value computation exactly comparable to that herein made. I would then place a total value on the property which would include the physical cost of reproduction plus the amount computed for going value, which would be computed in exactly the same manner as I have done here (T. 656), and the result would be exactly the same.

In my calculation here I have used the net income of the existing yard as it is before depreciation. It would be 4½% if 4% were allowed for annual depreciation. I did not make the deduction. I took gross before depreciation as I am not testifying on depreciation. 8½% happens to be the present gross figures based on the total valuation on which my computation is based. For the new yards in the assumption which counsel has given I would use the same

8½% before depreciation if that were the past history of the yards (T. 657) and if the proceeding in question were not instituted by the company as an application for an increase in rates to a fair return. In such instances I would use the rate as I found it. In a case involving an application for an increased rate I think going value ought to be computed upon a fair rate of return rather than the present return. In the illustration which counsel gave I would find for this new yard approximately the $667,000 which I have found in my report. That is what I would advise a client, a prospective purchaser, as the amount which he could pay and break even. In other words I would advise him that is what it would cost him to finance into an income equivalent to what the old yard had (T. 658) and if the new yard were applying for a reasonable rate I would cal- [fol. 613] culate that up to a fair rate of return. I think that a going value computation based upon conditions, which are likely to change, ought to be based upon the future, rates which have to be earned in the future rather than in the past. What I mean is that the going value of this new yard which is being discussed would be the same as that of the old yard when the new yard has been constructed and financed to an income equal to that yards now existing (T. 659). Assuming that on January 1, 1930, the new yard is complete and ready to open for business and the Secretary of Agriculture were asked to fix a just and reasonable rate for it to operate under I would recommend that the Secretary of Agriculture allot it some going concern value. I think the rates necessarily being collected in the future he must take into consideration conditions of the future, and not being subject to adjustment every few days, I think that rates ought to be fixed at that time on a rate base which would include the physical cost plus the going value in that case just as I have in this proceeding (T. 660). As to whether the amount would be the same at that time, going value is an increment, but I think that rates ought to be set at that time which will be equitable over that period of time in which they are going to be collected, a period in the future, rather than being changed each year. At that time the new yard would not have incurred the full amount of going value which I have computed in this proceeding but in the course of the ensuing three or four years it would have incurred that amount.

Assuming that there never had been a stockyards at St. Joseph until the new yard under discussion was completed on January 1, 1930, and thereafter the five-year period had expired, so that we come to the year 1935 and my prediction has worked out just as I said it would, the yard having attracted the same amount of receipts and the same amount [fol. 614] of income during those five years which I am now predicting, so that the past history in 1935 is just as I have said it would be and I were called upon then to compute the going value of that yard I would compute it just as I have in this proceeding (T. 661). Under the assumption which I understand to mean that the forecast had been exactly realized in actual practice I would compute the going value by the same method and would come to the same conclusion. In both of the cases assumed by counsel one would be reproducing a business that is there. That is, it has been established in both cases. In one case it has been recently established and in the other (T. 662) it has been established over a period of years. The method would be identical, and I think the result would also be the same.

I stated that I had testified before the Interstate Commerce Commission as to this method of computing going concern value. I have not seen any of the Commission's opinions, but I think it is safe to say that they did not adopt my method. I have not seen the Commission's opinion in the Virginian Railway case and I don't know that my method was definitely turned down in that case, but I have seen other cases where it has been turned down by commissions and allowed by the courts. I know that the Interstate Commerce Commission turned down present-day prices and has since been reversed by the United States Supreme Court. I did not testify in the Virginian case. I don't know who did. I don't know whether there was anything (T. 663) presented for going value, or the theory upon which the computation was based.

Prior to making this computation of going value for the St. Joseph Stockyards I made one for the St. Joseph Belt Railroad, that was in October, 1926. I visited the stockyards prior to that report and ascertained the facts therein [fol. 615] stated and I re-visited the stockyards prior to my stockyards report. I think I ascertained my facts from the same people in each case and from the same sources, some of them published sources. It was a month or maybe

six weeks ago I visited the stockyards for the purpose of making my report which is Respondent's Exhibit No. 8. I was at the yards one day and I asked for (T. 664) and received other data that had been compiled for me by the company. My investigation at the yards did not consist only of talking to those people who told me about the probable recovery of receipts. It also consisted of taking figures from the company's books, and seeing that the data that had been requested was furnished, and a general familiarity with the yard operations, or renewing my prior familiarity. I only made a physical inspection of the yards and of its operations at that time in a general way. I had been over the yards and railroads and the physical structures in years previous. I know of two packers who operate at the yards. I don't know whether there are more, they are Armour & Swift. I think they buy livestock in the yards. When the livestock has been sold to the packers it is my understanding that it is put into holding pens. I do not know the extent of those pens (T. 665).

In my report I stated that I had interviewed four of the best-informed commission men at St. Joseph, but I am not personally acquainted with all the commission men there. As to how I know that the four I interviewed were four of the best-informed, I asked the company to let me interview individually four of the best-informed commission men whose clientele was most representative, or, taken jointly, would furnish a most representative report of the producers' area. Then the company produced these men whom I have described, and whom I had never seen before (T. 666). When we start the computation of going concern value [fol. 616] we don't know the amount of it. We do not know all other factors, the business to be recovered, the rate at which it is to be recovered, and all other factors of importance, so that everything is fixed except this one figure; that is still unknown. It is necessary, therefore, in arriving at a total, because interest is credited on unexpended balances, to assume some figure. Referring to Table 2, on page 36 of Respondent's Exhibit No. 8 (T. 667) the assumed going value enters into some of the numbered columns in that table. It is reflected in column 6, being the amount invested at 4%; that is, the part not yet drawn from the bank and put into either physical plant or going value increments, and is reflected in column 6, as you will note, by a decreas-

ing amount. It is also reflected in column 7, the amount withdrawn during the year. For instance, in the first year, we computed a going value of $155,528, which appears as amount withdrawn in column 7, as having been withdrawn prior to 1930, so that interest on those two, interests for average bank balances, the amount left in, in that year, is computed as incomes on unemployed capital, appearing in columns 8 and 9, the sum of which is carried forward into column 11. For instance, for the year 1930 deficit interest credited $22,048, appearing in column 11, which is added to the net income from operations appearing in column 2 of the same table, and produces column 12, or an amount of $116,058. In other words, the income of the plant for that year consists of income from operations, plus interest credits.

I consider that the man who has debated as to whether he would buy an old plant or build a new one has on hand this $5,040,000 shown in the table, and that $667,858 of that is what he has on hand to pay for the element of going concern value (T. 668). Until he builds a new plant, of [fol. 617] course, that amount of money remains idle, and he can invest it at 4%, which is shown in column 6. I decrease the $667,858 by the present worth of the excess income, appearing in the next to the last column of Table 3, on page 37, to get the $512,330. One hundred fifty-five thousand, five hundred twenty-eight dollars ($155,528) of that same figure appears in column 7 next adjoining, and is for the amount withdrawn during the year, on which he could earn an average bank balance of 2%. That is his going value increment for the year. It is something more than actual expenditures of getting business. It is the difference between his financial status of that year and what it would have been, had he bought a going property. It is more than going out and inducing shippers to come to a market. The man who starts to build this plant has been advised that he should elect to pay this amount, $667,000, more for the going plant than if the plant had to be built, and that if he (T. 669) elects to build a new plant, he must be willing, or he must be able, to charge himself from that $667,000, an amount each year which will represent the difference between the earnings from the plant that he is building and the earnings from the plant that he would buy. Now, the first year, that amounts, according to

this computation, to $155,000 and some odd. For the first year, he had the whole amount, $657,000, deposited in the bank, on which he could earn 4% during the year, and this has accumulated to the amount of $155,000. He draws that out of the bank, assuming a uniform rate of withdrawal, and, accordingly, from that part that is withdrawn from the bank, he gets 2% interest on his average bank balance, which amounts to 1% interest on the amount withdrawn, and on the part that is not withdrawn he still gets 4% for another year. In other words, he had to withdraw this $155,528 to make up for the difference in his two positions. [fol. 618] It is not the loss, the deficit; it is the difference in financial status. In other words, had he bought the plant, he could have, that year, had $155,000 more in his pocket than if he had built it, and he has to charge himself that amount. If he kept that amount in the bank, earning 4%, and just made this charge on his books, he would simply be fooling himself (T. 670). If he had his $155,000 more earnings in his other plant, he would have it available. If he has to make his status comparable, he should have it available here, but, as it is, he has to pull it out of the bank, and, in doing so, he sacrifices interest. He would have to have it available, not for expenditures, but to keep his own books level. He wants to find out what advantages, if any, he had in building his plant, instead of buying it. Now, he has to keep his finances and his book accounting the same, equal, or he is simply fooling himself. He could not leave it there in the bank, and continue to get this 4%, and then write it up on his books, as if he were getting the 2%, because he does not have this $155,000 until he takes it out of the bank. He has it in the case that he has earned it, and he has it to do what he wants to do with it. Now, there is one way that he can do it that is exactly comparable; that is, to pull it out of the bank, and put it in his pocket. If you credit the interest in one case, you must in the other, and you are just back where you started. As I see it, to do otherwise is not balancing the two conditions.

The rate of return used would materially affect the amount of going value (T. 671). The relationship is not that direct that doubling the rate of return would double the going value. I would qualify my former statement by saying that increasing the rate of return would increase the going value up to a point where a fair return is reached. It

the rate of return were halved, it would reduce the going [fol. 619] value. The going value which I assume does not automatically affect the going value which I finally compute. After I have decided the fundamental factors as to revenue, rate of recovery, physical plant, and those things from there on, it is just one calculation, and what you assume for going value has no bearing on its ultimate result. There can be only one correct answer produced in any fixed set of bases. It would not make any difference in the final result if I assumed a million dollars rather than $667,000, because that is just exactly what is done. The first calculation is run through on some round figure. Even though the first assumption has been extremely accurate, it is rarely the case (T. 672) that the computed going value checks with the assumed going value, which shows that the assumption was incorrect, and then the computation has to be made over again, assuming a new going value, which will bring it to a still different conclusion than the first computation, and by working it through a number of times the computed going value finally checks substantially with the assumed going value, and that is the only answer that can be secured from the same set of bases.

I base my going value on the stockyard company's figures as to plant valuation and expenses, and if the Secretary of Agriculture should find a different figure the going value would be subject to some adjustment.

Among methods of computing going value other than mine there is the one commonly known as the "past deficit" method. That is similar to the one sometimes called the "Wisconsin deficit method." There is a distinction, however, in that the Wisconsin method capitalizes deficit, whereas the straight past deficit method merely accumulates deficits below some rate of return (T. 673). Both of these methods puts the deficits directly into the rate bases. What [fol. 620] I refer to as the past deficit method puts the deficits in, where the Wisconsin method compounds, adding the deficit to the capital account each year, and then those two become the rate base for that year upon which fair return is computed and a new deficit determined, the new deficit in turn being added to the rate base of the year previous, plus new construction. Then, there is a method that is sometimes used based on such units, as dollars per consumer, which really is not a method. It is an approxi-

mation and, of course, there is the percentage which I think is also not a method, but simply a short cut for a method. The last one, I think, is taken from a study, showing all going value allowances, in cases showing a selection of similar properties. The former is usually inferred from a study of the history of the company being investigated, and the expenditures, time and effort that has been made, expressed in dollars per consumer or similar units (T. 674). The method last mentioned might either be a deficit theory, or it might be the application as applied to the reproduction, using the expenses of the past as a guide. I do not approve either of those methods. I think the Wisconsin deficit theory is an incorrect method. I think that the working out of the method, which finally resulted in its abandonment in its own State, is the reason, in that the past deficit compound method really places a bonus on poorly conceived, many times poorly operated properties. In other words, it leads to an answer in which the more a property loses, the more it is worth, which we all know is exactly contrary to fact; as to the conclusions to which it reaches, I think it disproves the theory. Incidentally, it is the past cost method, whereas I think the courts, in their recent decision, have very plainly shown that cost of reproduction is at least entitled to major consideration, and, so far as [fol. 621] I know, this method presented here is the only strictly cost of reproduction method, this method being exactly comparable in reproducing the business and the physical cost of reproduction as estimated by the engineers of reproducing the physical properties. I mean in respect to the method used (T. 675).

In this comparative method of mine, I have a different type of basis; I go on a different type of basis than the engineers did in determining the reproduction new cost of the physical property, but use the same method of computation.

I would characterize the past deficit method in the same manner as I have the Wisconsin method. My method is an entirely different process from the past deficit. It is the cost of reproduction method of evaluating the business. In other words, my method compares to the past deficit method in just exactly the same way that reproduction new of physical property compares to historical cost of physical property (T. 676).

I accelerate the rate of recovery of receipts from the seven years estimated by my informants, and the five years taken by me, to take a rate which was more rapid than the most rapid of any opinions I secured. It was done in the interest of conservatism. In other words, to resolve a doubt in favor of the people who paid the rate, the shippers. The facts are that page 29 of my exhibit shows that the fifth year there is a going concern value identical with the existing plant, so that there are four recovery years, instead of relying on the seven as a comparable figure. They told me that on the eighth year the comparative plant and the existing plant would be equal. That is plainly shown on page 33, in which you will note that the gross income of the comparative plant has but four steps in it, and in the fifth year, 1934, the two plants are identical.

[fol. 622] I have never had occasion to measure the good will of an existing property (T. 677). I have no ideas applicable to the measurement of good will, or the basis of measuring it. My method of measuring going value does not include good will. It is independent of it. As to how it excludes good will, in a monopolistic utility there is no good will. In the stockyards, I think there is a good will, in addition to going value. That good will manifests itself in shipments having been started, continuing to come in, in many cases, without solicitation, after having established the train connections (T. 678). The estimates of the recovery of the business I secured from the men interviewed are as follows:

The three stockyards men, Mr. Vant, Mr. Barkley, and Mr. Carroll, estimated that in the first year there would be recovered 80% of the shipments originating in Zone 1, 15% from Zone 2, and nothing from Zone 3, and that by the fifth year they would have 100% of the receipts in Zone 1, 80% of the receipts in Zone 2, 65% of the receipts in Zone 3, and that it would take eight years for the ultimate recovery of this business or its equivalent. Mr. Davis estimated that in the first year 80% of the business would be recovered from Zone 1, 20% from Zone 2, 10% from Zone 3, and that, by the fifth year, he would have recovered 100% of Zone 1, 75% of Zone 2, and 50% of Zone 3. That was his estimate of all of the existing business that (T. 679) would have to be recovered. The difference between that total and the present business would have to come from new business

and would require some time, and would require some additions, and he placed no limit on it. Mr. McKee estimated that 75% of the business from the first Zone would be recovered in the first year, 50% minus of the second Zone, 20% of the third Zone, and that, in the fifth year, 95% of [fol. 623] Zone 1, 75% of Zone 2, and 50% of Zone 3, would be recovered, and that the recovery of the remainder would take an additional time which he did not care to estimate, material time. Mr. Austin stated that, in his opinion, in the first year 60% of Zone 1 could be recovered, 40% of Zone 2, 25% of Zone 3, and that, by the fifth year, there would have been recovered 100% from Zone 1, 75 to 80% from Zone 2, and 75 to 80% from Zone 3; balance, if recovered, would be extended over some time in addition. Mr. Baker advised that, during the first year, in his opinion, 60% could be recovered from Zone 1, 50% from Zone 2, 10% from Zone 3, and that, by the fifth year, 90% of Zone 1, 75% of Zone 2, and 85% from Zone 3; the rest, if recovered at all, would be some years additional (T. 680).

I think all the expenses testified to by Mr. Burnell, that is, pre-organization expense (or the expense incurred prior to beginning construction) and financing expense, would not be reflected in the going value computation, because those two expenses, as I understand them and use them in appraisal work, are parts of capital accounts, which belong to the physical plant. When I make a cost of reproduction new of a physical plant, I include those two items as a part of the overheads. This is my general practice, and I consider that as a part of the cost of reproduction new of the physical plant, exclusive of land (T. 681). The reason I do not calculate going value on the reproduction new value, less depreciation, leaving the assumed going value out of the calculation, is because I am computing the going value of the property as a whole, including its business, and not just some physical structures. To leave out the assumed going value would be just the same principle as taking half of the physical plant, instead of all of it. In including the assumed going value, there is no compounding of going value. In fact, the going value as computed with certain [fol. 624] earnings on the total property, including the going value, as I have done, is less than it would be if computed on the physical plant alone, because of the interest credits which accrue to the starting plant on the going

value increments during the recovery period; that is, that makes the revenue of the starting plant greater by those interest amounts, and makes the going value smaller. In this computation, you will notice that the interest in columns 8 and 9, on page 36 of Respondent's Exhibit No. 8, amounts to a substantial item, and by that amount reduces the going value below what it would be to the physical plant alone, instead of total value (T. 682).

I stated that I thought the new stockyards should not be operated while in process of construction. I am familiar only by hearsay with the fire in the Kansas City stockyards which destroyed some 26 acres of pens. I do not know whether operations continued at that stockyard while those pens were being rebuilt, but rebuilding of pens is different from rebuilding stockyards because the building is simply the thing you see above ground, which must be preceded by the grading and laying of many miles of water and sewer pipes. I take it that the first floor paving, at least, did not burn at Kansas City. The estimate of the time necessary for the reconstruction of the St. Joseph Stockyards was made by others, not by me (T. 683). I do not know what they estimated as the time for laying sewers and water mains and the construction of pavements. I did not take that into consideration. I took into consideration the construction of these whole yards, with the same knowledge of the processes of construction involved, and of the interferences between operation and construction in new projects. I did not seek to ascertain whether the sewers and water and pavements would be finished in time to allow the erec- [fol. 625] tion of some pens and the receipt of some stock before the end of the year. I think that a year would be the minimum time, without carrying on both operations simultaneously. I do not know the method whereby the Denver Stockyards rebuilt its sheep yards without interruption of receipts. I think the type of construction where I got the most interference between operation and construction was work that I did during the War, when I supervised several cantonments, tried to combine the controlling of men with the construction program. While our most usual construction, of course (T. 684), is water works, we have abundant experience as to the costs and difficulties that arise, particularly from trying to operate before construction is completed. I am not familiar with the method

whereby the St. Joseph Stockyards continued in operation while reconstructing its unloading dock.

The statement on page 3 of Respondent's Exhibit No. 8 that what going value is should not be confused with the problem of how it should be measured, is a preface of what follows, and is intended to direct attention to the computation of going value, as being a reproduction or recreation process. That is, the going value is not a summarization of past deficits, but, as a reproduction process, is a means of recreating the business. The statement on page 4 of Respondent's Exhibit No. 8 that the original worth of going value in a property long since established had always to be created by cash expenditures, either directly to establish organization or indirectly to meet the difference existing between the fair earning power of the money invested and the amount actually earned in the early operations. This does not mean that at some beginning period of the St. Joseph Stockyards it lost the amount of money which I say these starting yards would lose. Those two figures have no inter-relation at all. It is simply a statement sub- [fol. 626] stantially that no property can be created (T. 685) and financed into an income without incurring losses. I think the facts would show that this St. Joseph Stockyards incurred cash expenditures and deficiencies below a fair rate of earning, very greatly in excess of the amount I have computed for the recreation of the business as of this date, and their going value development period instead of extending over four years, extended over a much longer period. I know that simply on inquiry. In practically every utility property where I have made a detailed investigation, that has been the case. Here I made inquiry only and was advised that that was the situation. When stockyards were first constructed they started small, with just a few pens and grew, and the business grew and there was not an idle investment doing no business throughout a period of years. But they incur these losses because they do not make a fair rate of return even on the smaller investments. They have to finance themselves into an income commensurate with the investment, and they both grow (T. 686). If their financial history shows that from the very beginning they made a fair rate of return, that would simply indicate that by the past deficit method they did pretty well here, and that if the past deficit method of

computing so-called going value had any standing, they would have a small going value. So far as recreating the business, it has no bearing any more than the fact that they bought the fence posts here in 1893 for $150.00 a thousand has any bearing upon the cost today. It is never true that a business does not incur any losses in its development. The amount may be in question but it is not possible to divert money from one source where it is earning revenue invested through a construction program and put it into another source without incurring costs outside of the physical expenditures. It just is not possible to do it. I do not [fol. 627] mean if one would take some money which had been invested at six per cent and put it into a new business, which took about a month to build, and that business would take with the public so well that 50 per cent would be made on that investment in the first year, one would have lost money, in the net result, but that is not the case in utilities, particularly in utilities subject to regulation, who are confronted with the prospects of being allowed to earn, if they can, a fair rate of return and no more (T. 687). The St. Joseph Stockyards was started many years before it was subject to regulation (T. 688).

As to why people who know from year to year just how much stockyard they will need to take care of their receipts, knowing approximately just how much receipts they are going to have each year for four years, need to tie up money by building a present plant big enough for four years hence, we are reproducing a property equal and equivalent to what is now here. We are doing this as a physical reproduction, and it seems to me that goes to physical reproduction rather than to the going value. I do not mean that that is a part of my general assumption, and in actual practice it would not be necessary to tie up that amount of money. Anyone who has been through many construction undertakings, I think, would desire to build this quickly and all at once, and I am not making that statement as an expert in stockyard construction. I didn't intend it so, but I think it would be impracticable to build a certain percentage of the sheep yards and a certain percentage of the hog yards and a certain percentage of cattle yards and a certain percentage of underground structure this year and some more next year and spread it out over 4 or 5 years. We all

know that piecemeal construction, particularly where it is done under contract and as it is in that case necessary interference between construction and operation would cost more than building it as a unit (T. 689). Such piecemeal [fol. 628] construction is not a reproduction new of the existing property, as is contemplated in a valuation case, nor is it an index of the present value of the existing property (T. 690).

With reference to a statement in the first paragraph on page 5 of Respondent's Exhibit No. 8, "Inasmuch as all present values are inherently created by future human needs, the use of this analysis of recreation cost, as a proper measure of value, must depend entirely on the assumption that the property, whose reproduction we are considering, will be fully needed in its present condition by the public of the future." A permanent and steady decline of the receipts of a stockyard would reduce its going concern value. That is what I mean by the statement in that paragraph, comparable to the logging railroad illustration that I have given. With reference to the paragraph marked 6th on page 15 of Respondent's Exhibit No. 8, we are dealing here with the value of a stationary business. I would compute the going value of a receding business in the same manner and if it were receding fast enough, as I stated yesterday, it would mean that it had an ultimate lack of service value or usefulness, the going value would switch over to negative (T. 691). The statement of page 16 on Respondent's Exhibit No. 8 that "When those two statements are complete the net results may be compared, and it will usually be found that the existing or going plant has a net financial advantage and the net difference thus found is the measure of this advantage and is the going value sought," does not mean that the going value is measured by the amount of net earnings of the existing plant. It means that it is the difference between the earnings from all sources of the going plant and the earnings from all sources of the starting or comparative plant, beginning with the date of beginning of construction and end- [fol. 629] ing with the complete recovery of revenue. I refer now to net income.

If it be a fact that were the St. Joseph Stockyards suspended, a new plant could never recover the receipts, that would not affect going value of the St. Joseph Stockyards

at all, because we are valuing the stockyards that is here and not another plant which would never be here (T. 692). The difficulty of attracting the receipts has a bearing on going value, but I do not think we can value a property fairly by wiping out from it all the conditions surrounding it at the time of valuation. I think that is a confiscatory assumption. Now, let me add to that and if it does not answer it you can strike it or whatever you want to do with it. The reproduction of the business to my mind is exactly comparable to the reproduction of the physical property and the unit bases are the same. For instance, we reproduce the physical property in Chicago using one and one-half dollars for labor in days where it is more difficult and costly; we reproduce it out in the country using 75 cents for that same labor. Now, the cost of reproduction in Chicago (T. 693) is therefore higher than it is the country for physical structure and the cost of reproduction is whatever we find it on physical structure. The same thing is true with the cost of reproducing a business. If you can reproduce a business easily the going value is less. If it is a difficult business to reproduce, the going value is correspondingly greater. It is worth more to the owner of the business if he gets it, and if the cost of reproduction is a measure it applies equally to labor or brick or business, as I see it.

If it be assumed that the business of the existing stockyard is of such a character that an intending purchaser could not attract that business, or any of it, to another stockyard which he might build, his conclusion would be that he had better buy the going value with the existing [fol. 630] yard. If he were my client, he would arrive at what was a fair price to pay for the going value of the existing yard in just the way that I have arrived at it here. That is what they have done in numerous purchase cases. In other words, I would have this suppositious plant to use as a measure; that is the way I would get at it in advising him, and would say that the receipts of the suppositious plant could never grow; therefore you had better not build it, but you had better buy the other one. But I would not say that the measure of the going value of the existing plant is the difference between its income and no income at all (T. 696). That is, I don't think it is the difference between no income and the present income. That is what I under-

stood the last of your question to be. No, I think it is,—the real question is that my client would ask me first of all, "What can I afford to pay to get into the stockyards business in St. Joseph, and should I buy the existing yards, and if so, how much can I pay for them, including any business, or should I build?" I would come to the conclusion that if he were to build a yards, the probability would be that neither he nor the existing yards could make any money, and the business already developed by the existing yards would be worth something to him, and that he had better not go into the stockyards business, or that he had better, and I would so advise buying the existing stockyards at its physical cost of reproduction plus a fair going value. I would ascertain the amount of that fair going value by this same method, by comparing it with a suppositious yard which I already knew could never attract any business. That is what I do in every water works. There are only three or four competitive water works in the country, and none of them, to my knowledge, successful, and yet water works purchasers pay good money for going value based on exactly this computation right along (T. 697). [fol. 631] I am not bringing in the element of competition as affecting my idea of what going value is worth. In my report, which is Respondent's Exhibit No. 8, I leave out the element of competition entirely, as I do in all of these computations.

Redirect examination:

Repairing a certain pen area is not comparable to the situation before us of determining the value of the St. Joseph Stockyards property, because here we are confronted with the reproduction of an entire property, above and below ground, in the least practicable time, in order to keep down overhead and interest costs and to secure the greatest economy in construction. That is an entirely different process from (T. 698) rebuilding some pens or divisions or similar work. An established business with just a part of its structures wiped out is not equivalent to a reproduction new of the entire business, physical structures plus the business. In this case the immediate problem is to reproduce the entire structures, including the assembled business. Just as in the reproduction new of the physical property one must start from the beginning without the as-

sembled physical structures, I must start from the beginning without the assembled business. The processes are comparable.

The cut and try method is commonly used in mathematics. There are many types of problems that can best be solved by that method. It is nothing new in the science of mathematics.

[fol. 632] Depreciation Reserve

JAMES A. COUNCILOR, a witness, called by Respondent, after being sworn, testified in substance as follows:

I reside in Washington, D. C., and am a member of the firm of Councilor and Buchanan (T. 700), public accountants specializing in Federal tax work, in addition to the usual work of public accounting offices. It maintains offices in Washington and New York. I graduated in 1914 from the Washington School of Accountancy. Since then I have received a C. P. A. degree from the States of Virginia and New York. Following 1914, for four years my work was of a miscellaneous character. In 1917 I was employed by the United States Bureau of Efficiency as a member of its staff, and for about 2 years was engaged in the designing and installation of accounting systems in various government offices. Late in 1918 I entered the United States Bureau of Internal Revenue, where I worked in various divisions until the fall of 1919, when I took charge of what was known as the Consolidated Returns Division. The work of that Division was the examination of accounts and tax returns of what is known as affiliated groups of corporations. These groups consist of companies, the stock of which is so held, either by individuals or by other companies, that a number of companies are thrown into a single group (T. 701). That division probably in [fol. 633] cluded most of the largest industrial concerns and public utility concerns in the country. I resigned from that position at the end of January, 1921, and opened my own office, and have been practicing on my own account since that time. As head of the Consolidated Returns Division, I had an opportunity to become familiar with the accounting methods followed by the stockyards whose reports for internal revenue purposes were made to that division, and the manner in which depreciation was handled.

Some of the concerns whose business I have handled, and with whose accounts I am more or less familiar are as follows: Gannett Publishing Company, Portland, Maine; Howes Brothers Company and affiliated organizations of Boston; Leather Commission Merchants, National Leather Company and affiliated companies of Boston; Leather Tanners, Hood Rubber Company, Boston; American Book Company, New York City; Remington-Arms Company, New York City; Merchants Banking and Trust Company, Washington; Washington Railway and Electric Company, a public utility of Washington, D. C.; Florida Power Company; Columbia (T. 702) Gas and Electric Company, New York City; Cincinnati Gas and Electric Company of Cincinnati; Cincinnati, Newport and Covington Light and Traction Company; United Carbon Company; Swift and Company; Libby, McNeil and Libby; St. Paul Union Stockyards; Sioux City Stockyards Company; American Toll Bridge Company of San Francisco. My relations with these clients were such as to give me information as to general accounting methods, including depreciation.

I am a member of the District of Columbia Institute of Certified Public Accountants, the American Society of Certified Public Accountants, and the New York State Society of Certified Public Accountants. I have been president of [fol. 634] the District of Columbia Institute of Certified Public Accountants, and also president of the American Society of Certified Public Accountants (T. 703). I think I am familiar with the accounting authorities, that is people who have written text books and are considered as authorities on public accounting. The purpose and operation of depreciation reserve and funds are as follows: Depreciation reserve is what is sometimes known as a valuation account. It is set up in the accounts of a business to reflect the accrued depreciation upon its property. In the early stages of the development of the science of accounting, it was usual to write off the depreciation as it accrued directly from the base value of the assets, that is to say, if the asset cost $1,000, and it was determined that depreciation in this accounting period was $100, that $100 would be credited directly to the asset account and at the same time, charged to expenses, thus leaving the asset account at a figure of $900. There were various reasons which made that undesirable and it shortly came to be the custom to set

that amount up in an account on the other side of the balance sheet, so that the books would continue to reflect the cost of the asset on the one side, with the offsetting depreciation reserve on the other. The reserve, as it is accumulated in this way, is subject to later charges on account of property that has to be retired. The expression "reserve fund" is applied to an account which appears on the asset side of the balance sheet. It is an account which is met comparatively seldom, but (T. 704) reflects amounts of funds or securities which have been specifically set aside to take care of some purpose, or for the purpose for which the reserve appears on the other side of the balance sheet. The purpose of the depreciation account is to reflect the accrued depreciation existing in the property. Let us assume that we have an asset costing $1,000, and during [fol. 635] the first accounting period we computed accrued depreciation at $100. We charge our operations with the $100, and we credit depreciation reserve with $100. Our balance sheet, at that time, will reflect on one side an asset valued at $1,000, and on the other side a reserve in the amount of $100, which on the balance sheet may be placed on the same side, the $100 being deducted from the $1,000, and the net value of $900 extended. If we assume, for some reason that seems best to the management, that funds are to be set aside to take care of replacement of that asset at the time it was anticipated that it would be retired, a special fund might be created, either in the amount of $1,000 or, if it was to be placed in securities, in a smaller amount which, with interest at the proper time, would amount to the cost of the asset. This method of setting up a special fund is quite unusual in accounting practices (T. 705). There is no standard practice as to whether depreciation reserve should be set up on a monthly basis or yearly basis. It is undoubtedly true that in the majority of cases depreciation is computed annually, for the reason that probably, in the great majority of cases, business concerns will not close their books more often than once a year. If they close their books semi-annually, they would undoubtedly compute depreciation semi-annually, and likewise if monthly accounting is used, depreciation would be on that basis. Renewals and replacements are charged against the depreciation reserve in the proper amount as they accrue. A repair is something which maintains the property in

approximately its present condition, such as replacing a broken window glass, repainting a building, renewal of small parts. A replacement is something which tends to improve the asset and to some extent restore it to its original condition. In proper accounting, repairs are ordinarily charged to operating expenses (T. 706). Renewals [fol. 636] would be charged against the depreciation account, but there are some exceptions. If we were renewing a property prior to the full depreciation having accrued, it is quite customary to charge against a depreciation reserve only so much as has been reserved on account of that particular asset, the difference being charged to the current operating expenses.

Depreciation, as carried on the books, is intended to represent the use that has been made of the property to the extent to which it has been deteriorated by that use. A tool that would only last a year would not be treated as if subject to depreciation. Hay, which might be used up in three or four months, would be charged immediately to expense. This would apply to other items such as coal. (T. 707). There is no difference at all between the use of a coal pile and the use of the property of a fixed asset nature, except as to time. For purposes of business, any wasting asset is simply a deferred charge against operations, whether it has a life of one year, or fifty years. One writer stated, "All of these assets are on an irresistible march to the scrap heap." A certain portion of their value is actually consumed every year in operation, and such value as actually is consumed is a part of the cost of operations. In practical effect, the depreciation reserve takes care only of items that have some extended life. There would be no essential difference in the manner of taking care, from an accounting standpoint, of the depreciation of a horse which might live 5 years and pens that would last twenty years, except as to the rate of depreciation.

Methods of Setting Up Depreciation Reserve

I am acquainted with the various methods used or available for use in setting up depreciation accounts (T. 708). There are several of them, but the largest part are nothing [fol. 637] but theoretical methods, and they are not found in actual practice. For example, there is what we sometimes call the maintenance method, which has it applica-

bility only in the case of a plant which has shaken down to normal operating efficiency, in which case the theory is that the current replacements, if charged to expenses, will take care of the accruing depreciation. I have known of that method being used, but used very infrequently. There is a method which we sometimes describe as the production method, which attempts to distribute depreciation on the basis of production, the general theory being that equipment used in producing an output will be able, during its life, to produce only so many units, so many tons of output, and that it should accordingly be depreciated in proportion to the number of units passing through each accounting period. There are other methods which attempt to distribute the useful value of an asset over its period of useful life on different bases. For example, the sinking fund method is a compound interest method, which distributes lighter charges during the early years of the life of an asset and heavier charges during the later years of its life. That method recognizes the fact that all of the life (T. 709) periods must bear the total expired cost of the assets but seeks to distribute it, as I say, with the lighter charges in the earlier years and the heavier charges during the last years. That is one of the compound interest methods (T. 710). The theory behind that particular method is that the property is not depreciating as rapidly during the early years of its life as it is during the later years, and that the curves computed in this manner would more nearly reflect the actual expression of useful life. In my experience I have not found that method in use with any of the companies which are public utilities and which have been my [fol. 638] clients, or with those whose accounts I have had contact when with the Bureau of Internal Revenue.

We have another method which produces a curve of just the opposite shape from the sinking fund curve. That is the one which throws the heavy charges into the early years of the life asset. The theory there is that the repair charges will be heavier during the later years, that by throwing heavy depreciation charges into the early years, the total repairs and depreciation will more nearly equalize year by year over the entire life. I have never seen this method used except in theoretical discussion.

Then, of course, we have the old standby, the straight line method (T. 711). In this method the cost or base value of the asset, less its estimated salvage value, is distributed over its life in equal installments. Under the best accounting practice, these installments are credited to the depreciation account each year. An exhibit, which has been marked for identification Respondent's Exhibit No. 10, is a slight revision made by the engineer of the Respondent of life tables and values made by the Government engineer and appearing in Government Exhibit No. 12. Respondent's Exhibit No. 10 shows the property of the Respondent as a property of many kinds, with various stages of life for the various units (T. 712).

Criticism of Sinking Fund Methods

It is what might be called a composite property including buildings, structures of various kinds, equipment, and so forth. In a property such as described in Government Exhibit 12 replacements and renewals would be required from time to time at unknown intervals, especially as I understand that property is an old one. If the property was first built in 1898 and the estimated lives of the various parts of [fol. 639] it are correctly stated in the exhibit, it would appear to be a property in all stages of age at the present time, from property of middle-age to property that has been probably replaced several times. In my opinion a reserve for depreciation for property of that kind could not properly be set up upon the sinking fund compound interest method. By that method I mean the method I described in my previous testimony (T. 713) or by the method indicated on Government Exhibit 12. It is more than likely that the property, which has been in existence for over thirty years, will reach a point where annual replacements or renewals will approximate the straight line depreciation over a period of years. The current replacements in any one year might not equal the amount of depreciation charged. In another year they might exceed the amount of depreciation charged. One of the weaknesses in the theory which has been proposed here is that if the amount which it is here proposed to allow as depreciation is to become eventually equal to the value of the property which is being depreciated, it must earn an income. I am not able to say

how this amount can earn an income in the business under any circumstances, whether it be $63,000 or $117,000. This latter figure appears in Government Exhibit 12 as the annual depreciation. That must mean, as I see it, that the property is being worn out or consumed at the rate of $117,000 a year and if it is to be continued in efficient operating condition that that sum, or some approximate sum on the average, must be put back into the property over its composite life. If that is done, there could be none of this amount which could be earning any income to be added to the principal sum.

There is another very fundamental difficulty and that is that according to my analysis of the situation, the sinking fund theory or a sinking fund theory of this kind, because [fol. 640] there are different applications of what might be called sinking fund methods, can not walk down the same street with a rate base computed at replacements less depreciation (T. 715).

As these exhibits stand the sinking fund would never have a chance to accrue; that is, the company would be losing property value of $117,000 a year and be compensated at the rate of $63,000 a year and would suffer a net loss of the difference.

With respect to the suggestion in Government Exhibit 12 that the $63,000 would be put out at compound interest of at least 6 per cent or perhaps 6⅔ per cent, I would say it was quite doubtful if such a rate of interest could be obtained over the composite life of 26½ years because there are various elements that must be taken into consideration in the establishment of such a fund. It must be invested in such securities as are readily marketable because you may have to use some of the funds at any moment for replacements. The funds would have to be in securities which would both have a ready market and would not be subject to fluctuations in value (T. 716). I don't think we can find that kind of securities that will pay over 6 per cent to 6⅔ per cent. If a 6 per cent bond were purchased, if one could be found and bought at par, and at the time the money was needed the bond was selling for 90, our fund would fall short just that far even though we were still getting the 6 per cent. Where the entire fund would accrue for the composite life of the property, the

money would have to be placed in high type securities. In that event you might be able to pick certain maturities which would eliminate to some extent the element of gamble (T. 717) in market value. That is about the only distinction that I would make between that and if you were funding the reserve for the purpose of taking care of retirements from time to time. In the latter event, where the [fol. 641] securities would produce a sure return and at the same time we could obtain, say $100,000 the middle of next month, if we needed it, the securities would be of the type that are available for trust funds, such as Governmental and municipal securities, very high grade bonds, public utilities bonds, yielding perhaps up to 5 to 5½ per cent. Some yield 4 and 4½ per cent. If the renewals and replacements approximated the straight line method of writing off depreciation there would be no chance for any investment of the funds. It has been suggested that the money in the depreciation account be put into the business instead of in outside securities. I do not believe that that would be practicable with a depreciation account which is to be compounded annually and produce a certain definite amount at the end of a definite period of years (T. 718). In the first place, it is altogether too speculative, subject to the vicissitudes of the business, and there is always the possibility that any property in which it might be found necessary to invest the funds would not produce the theoretical rate of income. For example, if it were necessary to build an addition to the Exchange Building, such addition might be needed for administration purposes but probably would not earn its 6⅔ per cent. Another example would be in case it was necessary to put roofs over pens where they do not now exist or change the type of feed trough or something of that kind. This would not necessarily bring about any return on the investment unless it was accompanied by a change in rates (T. 719). Another example would be if the wooden fence posts were supplanted by cement fence posts and there were no change in rates.

If $40,000 cash were accumulated and $20,000 were needed for a particular improvement, naturally the other $20,000 would not be producing an earning, unless it were invested outside. If the company felt that in twelve [fol. 642] months from now they would need twelve more pens and decide to complete the twelve all at once, there

would be an apparent loss of income for the money invested in that addition (T. 720). That would continue until such time as the capacity of the pens, or the facilities, were fully required. In order to make this theory work out at all, assuming it could work, it would first be necessary at the close of every accounting period to have the necessity for income-producing additions of an amount exactly equal to the depreciation charge. These additions would have to be constructed in an Aladdin's Lamp style; that is, they would have to be brought instantly into place, and instantly must begin to earn income at the estimated rate, and any respect in which it fails will result in the depreciation reserve falling short to that extent. The period of construction would constitute a loss of part of our interest as well as the period between the time when the additional piece of property was constructed and the time it came to a use where it would earn this rate of return (T. 721). I regard this as a serious obstacle to the use of that method and think it would make it impossible to use in that manner.

I have never seen or heard of any accounting system which recommended the use of a sinking fund method as indicated in this case for the use of a property such as a public stockyards. No accounting system with which I am familiar ever recommended such a use of the sinking fund method of depreciation. I have discussed this subject with other accountants and have found that they are unanimously of the opinion that it is not a practical method. So far as my experience has gone the Income Tax Bureau has never allowed any method of writing off depreciation than the straight line method (T. 722). I was in the bureau at the time the question was under discussion in 1919 and [fol. 643] 1920 but I cannot say that the policy of the Bureau was definitely fixed at that time any more than prior or subsequent thereto. I attended some discussions when I was attached to the bureau at which these other methods were brought up but they were dismissed and so far as that is concerned I don't think any of them has ever been seriously considered. You can probably say that the policy of the bureau has been to use only the straight line method from the very beginning; that is what it does now. There has never been any other basis. That applies to both individuals and corporations (T. 723). The sinking fund method so far as I know its ever having been considered

by the Government related only to the distribution of the expired value over the period of years and not to any compound interest method. What I meant a moment ago when I said it depended upon a question of rates was that over the life of the property exactly the same amount would be recovered by the tax payer and allowed as a deduction under one method as would be allowed under another, but under the sinking fund method the heavier charges would come in later years. Now, during the years of high taxes, '17, '18, '19, '20 and '21, particularly, if the sinking fund method had been used naturally the depreciation charges in those years would have been much less and the income much higher, and the tax would, of course, become much higher. If the Income Tax Unit permitted a corporation to write off $100,000 depreciation for its plant, the tax would be less than if it allowed it to write off $50,000 (T. 724). If the reserve of $63,000 a year were put into some security, rather than to take the hazards of the business, the income would be taxable except to the extent that it is invested in tax-exempt securities such as State or municipal bonds (T. 724-a). The fund would fail to the extent of the amount of the tax. The extent of that failure carried on by [fol. 644] compound interest computation would become much larger ten or fifteen years later.

I am familiar in a general way with the way in which this subject has been treated by the Interstate Commerce Commission. That commission issued an order prescribing depreciation for steam railroads in 1926 (T. 725). That opinion and order is found in 118 I. C. C. 295.

It is agreed by counsel that the Secretary of Agriculture may take judicial notice of the above-cited decision, being Docket No. 15,100 and in that connection counsel for respondent calls particular attention to that portion of the report beginning on page 353 and under the title "Determination of Depreciation Charges" and ending about the middle of page 356 (T. 726).

Assuming that in this proceeding the value of the property to be used as a rate basis is not the cost of reproduction new but the cost of reproduction less depreciation as determined by the Secretary upon the evidence in this case, it would be improper to accompany such a depreciated value with this compound interest reserve fund method. In the first place, the use of a depreciated rate base pro-

ceeds on the theory that the company is not entitled to any compensation for the use of the property which has been consumed. If it is not entitled to compensation for the use of the property which has been consumed then it is certainly entitled to compensation for property as consumed (T. 727). It is only good logic that the company must either receive compensation for the use of property, or compensation for the property itself. For illustration, if a composite property of this general nature when constructed new is worth a million dollars and the rate base is going to be fixed upon the depreciated value which at the end of one year is $900,000.00 in my opinion the owner of the property should not simply take a loss of $100,000.00 because he has [fol. 645] operated the property for a year. It would require nothing less than $100,000.00 to make him whole for that loss in value for that year. Suppose we conceive of a property which could continue to function on a continually declining line, a property which cost originally a million dollars and eventually winding up in 10 years at a cipher, it might be possible with a declining demand as the value of the property was consumed it could continue to function and serve the community. At the end of the first year a value of $100,000.00 would have expired. Beginning new the company would naturally be entitled to earn on one million dollars (T. 728). Assuming that at the end of the first year the value dropped $100,000.00, the return from the following year would be computed on $900,000.00, but the owner must be paid his $100,000.00 for the value of property consumed in the business the first year. At the end of the second year we have another drop in value of $100,000.00. The owner must be paid that $100,000.00. This would continue the succeeding year and the return would be computed upon the basis of $800,000.00 and so on.

In the sinking fund method proposed by the Government the owner will not be so reimbursed each year (T. 729). The sinking fund method proposed by the Government might be a fair method if the cost of reproduction new would be used as a rate base, except for the rate of interest. In that event the owner would always be earning on the amount invested in the property during its life. All it would need would be something to take care of the property at the end of its life. In other words, I think it is

entirely out of question to expect to place funds of this kind in, and at the risk of, a business and expect it to be earning money at a theoretical rate of return. On the other hand if the rate of interest is computed at a fair investment [fol. 646] rate, and the rate is based upon replacement, no doubt the answer would be fair, but the two theories do not mix, that is, the straight line theory goes hand in hand with the sound value or replacement less depreciation. The proper sinking fund method goes along with the return upon the replacement new, for more or less obvious reasons. The first method contemplates that the owner would be reimbursed for the consumed part of his property currently, and the other method assumes that the owner is not to be reimbursed until the property is retired. If he is not to be reimbursed until the property is retired, then he is entitled to earn on the property until he is reimbursed (T. 730). That is practically the doctrine of the Interstate Commerce Commission in the case to which I have referred. The case of reproduction new and sinking fund must get together or depreciated rate base and straight line. You could not mix the two, one inherently involves the other. In my opinion the use of the depreciated rate base plus the sinking fund method, proposed by the Government, in fact deprives the owner of a part of his property value during the entire life, assuming that the factors I have before me are correct.

Government Exhibit No. 12 sets forth a statement taken from the books of the company of the amount charged to repair for some recent years and also shows the amount charged by the company to its depreciation account for some recent years (T. 731). If a new system of accounting is to be adopted and a new basis for depreciation and a new rate base, it would not make any difference as to the propriety of the future as to whether a mistake had been made in the past in the repair account or the depreciation account. If the theory is sound, it is sound regardless of mistakes that have been made. If an item were charged to the repair account which should have been charged to [fol. 647] replacement and depreciation accounts, that is an error at the time it is made, and if made in the future would likewise be an error. The past accounting methods of this company would not in any way affect my opinion as to the depreciation of the accounting methods for the future, so

far as depreciation is concerned and by whatever method used. As an accounting matter the straight line method of estimating depreciation reserve account is much simpler than the method proposed by the Government (T. 732).

By way of summary, I have not known of the sinking fund method being used for property of this character in my experience in private practice or in Government offices. In my opinion Respondent would not receive on account of depreciation, from its patrons, as much as is lost in property value. The straight line method would naturally avoid the uncertainty of long term investments, rates of return, and possible fluctuations in value of securities in the utility in that there would be no necessity for any such investments. As far as I am familiar with stockyards property, the sinking fund method here recommended by the Government has never been used. I think it is incumbent upon the public which patronizes and uses the property to pay the owner, each year, an amount equivalent to his loss in property value due to the use by the public (T. 733). Any less amount would be depriving the owner of property value.

Cross-examination:

For some of our clients we audit their books, for others we make tax returns and for others we do both. We probably do not audit the books of most of them. We did not audit the books of the public utilities mentioned among our clients in the sense of making the annual audit. We have a staff of from three to six men who are making what [fol. 648] might be regarded as a continual audit of many features of the accounts, of one of the customers in particular, that is, the Columbia Gas and Electric System (T. 734). These audits are made for the purpose of analyzing the accounts to make certain that charges have been properly made and to see that they are properly reflected in the tax returns. The audits that I have just referred to are made solely with a view of making tax returns. We never make audits for rate purposes. I am reasonably familiar with public utility methods of accounting but have never kept accounts for a public utility. I have never examined the books and records of the St. Joseph Stockyards Company.

I stated that the reserve fund account reflected the funds of securities which had been set aside, or earmarked for the accomplishment of a particular purpose, as indicated by the reserve which is carried on the other side of the ledger. (T. 735). This fund would represent cash or securities. I suppose that it might be invested in some property but I have never known of it being done, it is very unusual. We always think of the fund as something that is readily available and readily convertible. I have not seen Government Exhibit No. 11. On page 1 of Government Exhibit No. 11 it appears that two amounts have been set aside for depreciation; first, the reserve for depreciation of buildings and improvements amounting to $1,320,102.34; and a reserve for depreciation of equipment, furniture and fixtures amounting to $72,450.04 (T. 736). The amount collected through depreciation is not necessarily ear-marked, it may be invested and reinvested. There is nothing ear-marked here that would represent it. By "reinvested" I mean for example for that reserve from earnings $100,000, representing depreciation, that simply means that we set that apart, out of surplus. It is not going to be [fol. 649] distributed to stockholders, but on the asset side of the balance sheet it may be represented by assets of different kinds.

Government Exhibit No. 11 indicates that there might be some of the depreciation reserve invested in lands and some in the Belt Railway. According to that Exhibit $514,000 is invested in the latter. There is not any way of telling the source of any fund or asset appearing on the balance sheet, page 1, Exhibit A of Government Exhibit No. 11. It would be quite possible that the $514,000 is money provided by the depreciation reserve (T. 737). According to Government Exhibit No. 11 Respondent has outstanding in first mortgage $1,190,000 and an outstanding capital stock of $3,750,000. Other than the first mortgage bonds and the capital stock there are certain current liabilities. Rents and deposits paid in advance $1,038.97; accounts payable, $20,035.53; accrued taxes, $74,027.35; accrued insurance, $368.82, then, we find surplus of $383,747.08 (T. 738). The total assets amount of $5,419,217.75. The reserve for depreciation is not included in that figure. The gross amount would be procured by adding to the last named figure the amount of the depreciation reserve which would give $6,811,000 plus. We do not ordinarly think of

it in that light though, because the depreciation reserve after all, is but a valuation account. A more proper showing is made, by using the net figure. The depreciation reserve itself represents the actual figure that has been deducted in times past as an operating expense, set aside for this purpose, but what I meant was the smaller figure which I first named, that is $5,419,000, more correctly reflects the condition of the company in that it goes to the sound value of the assets, rather than the figure $6,811,000 which reflects the original or base value, gross, from which some other figure must be deducted to determine the net value. [fol. 650] (T. 739). From the balance sheet in Government Exhibit No. 11 it appears that Respondent has current assets amounting altogether to $169,735.64; land amounting to $3,372,969.25; net value of buildings and improvements amount to $1,323,907.97; net value of equipment, furniture and fixtures amounting to $22,629.75; investments amounting to $518,953.95; and prepaid items amounting to $11,021.19. Whether the figure $1,323,907.97 represents the amount invested in lands and buildings depends upon how "invested" is defined. I could not tell from the balance sheet whether the figure $2,644,010.31 represents the actual cash investment in this property, with the corresponding assumption that the $1,32[illegible]00 just referred to would be a residual amount from that original cash investment or not. This gross figure might be figured from appraisal, for all I know. It might be an actual investment or it might be an appraisal figure. (T. 740).

There might be some fine-haired distinctions as to what is meant by "invested." The amount of $1,393,552.38 has certainly been accounted for in the accounts of the company. I don't know whether the company has it invested in any form. I know as a matter of experience that these things are not lost in the accounts. The depreciation when charged off is accounted for. Just what has happened to it since no one could tell, of course, without following through the records. We do not set funds aside in the depreciation reserve. That reserve is set up regardless of whether it is funded. The funds that are provided for, or allowed for, as a depreciation reserve are simply allowed to remain in the business without any ear-marks. (T. 741). They may be in working capital for a while; they may be invested in additional plant; they might be invested in securities. If good business judgment and prudence do not

[fol. 651] dictate such a course of procedure on the part of a company there are some pretty good ones that have gone bad. I do not know of any other procedure that is followed by the best managed corporations in the country. A company that is well managed will allow the amount to remain in its business. (T. 742). Undoubtedly a company using good business judgment will put these funds to work in some form or other. If it is at all possible they will be earning something and there are various ways in which they can be put to work. If the funds are not needed currently in working capital the company may buy securities of some form. Also the company may use the funds as working capital or as part of the permanent assets of the company but in whatever form they are working presumably they are making money for the company.

I would not approve of a company using its depreciation reserve for the payment of special dividends or items of that kind. (T. 743). It is my opinion that such funds should be kept within the management of the company for the purpose of earning in some form of security or as working capital or as a part of the assets of the company. I do not know what Respondent is now earning on its investment in the Belt Railway Company. I do not know what Respondent is earning on any of its other investments or on its loan of $50,000 to an affiliated company.

It would be very difficult for the company to invest these funds which are allowed for depreciation reserve so as to earn with certainty a very large rate of return. I don't think it would be safe to assume that they could be invested in securities, which would have a ready market and no very great fluctuation in price, to yield more than, say, five per cent. (T. 744). I think it would be quite possible to make investments that would be safe, that would yield more than five per cent, but not with the possibility of in- [fol. 652] stant liquidation, nor with the reasonable assurance of no wide fluctuation in market value. When I speak of a depreciation fund I always have in mind something which appears among the assets, as an ear-marked fund. In that respect a corporation ordinarily does not have recourse to a depreciation fund, because they do not ordinarily ear-mark funds. (T. 745). If Respondent wanted to make a replacement or renewal costing $200,000 I don't know how it would proceed. It would probably go ahead and order the work done and the money would be available

as the work proceeded. There happens to be only $46,000 in cash in the accounts of the company at that particular moment, but, of course, that is not at all important. I assume that its borrowing capacity and earnings are good and there would be no trouble in financing the work. If we had an entirely different balance sheet and the depreciation reserve here shown had been funded and would be represented on the revised balance sheet by securities or investments (T. 746) I assume that Respondent would proceed with the work even though the funds were not readily available. Respondent would get the money to pay for the work either from current receipts, if it had to be paid for instantly, or if charges were deferred a while, from receipts as they were made available, or by loan. The investment of funds which have been provided for by depreciation allowance would not be a deterring factor in carrying on necessary improvements.

The Income Tax Bureau not only permits the taxpayer to figure depreciation on a straight line basis in making his tax return, but requires it. The basis used is usually either on a cost or a valuation as of March 1, 1913, depending upon whether the property was acquired subsequent or prior to that date. The purpose of taking March 1, 1913, [fol. 653] is because that was the effective date of the income tax amendment. (T. 747). If a company makes a reappraisal and sets that upon its books it is handled very roughly by the Income Tax Bureau. That is it is disallowed as a base for depreciation. Of course there are some cases in which appraisals might be accepted, as in cases of certain sales or reorganizations which are subject to tax, but in those cases it goes under another theory which is that the appraised value becomes the cost of the new organization. From a standpoint of good accounting it all depends upon the circumstances whether depreciation should be figured on the appraisal base or the original cost base. There are many cases with old established companies where a cost less depreciation base does not correctly reflect the financial position of the company. It might understate it a great deal. There are cases over a period of years where accounting errors will creep in. They are bound to in an organization of any size. Items will perhaps be charged off that should have been (T. 748) capitalized, and we perhaps eventually reach a point where in

order to get a correct picture of the financial position of the company it is necessary to have an appraisal made for the purpose of correcting the value of the assets, correcting the depreciation reserves, and so on. That, however, is something entirely aside from income tax procedure, in which the practice is inflexible. There are many reasons, of course, for setting up appraisals in the books of account, some of which I think are fairly good, and some of which are not so easily justified. We find it done sometimes, largely for credit purposes. They are perfectly proper appraisals.

During some of the years following the war we found a great many balance sheets that had to be dressed up to keep the standing of the company, at least on paper, in such a condition that the bankers would still loan money. [fol. 654] There is always more or less of a question as to the propriety of including appraised figures, and each case must be analyzed on its own merits.

From an accounting or bookeeping standpoint the amount of depreciation resulting from a new appraisal is just added into the value of the property. (T. 749). On the other side of the balance sheet the best practice would require it to be ear-marked as surplus from appraisal, although there are some of the very best accounting firms in the country that will merge it with the general surplus of the company. Surplus does not necessarily mean an earning, inasmuch as some of it may have been paid in. The definition of earned surplus is one that has taken the accountants a good many years and they haven't gotten a good definition of it yet, but it appears as a part of the general surplus of the company instead of being particularly marked as having arisen from an appraisal. The handling of depreciation after such a reappraisal had been set out on the books would depend upon the purpose for which the depreciation was being computed. For the usual purposes of the company one would perhaps start right over again and depreciate the new base. For tax purposes one might deduct only the amount of the original when the depreciation is computed upon the original base. (T. 750). Assuming that a public utility has made a reappraisal and set it up on its books and then proceeds to figure its amount of depreciation reserve on the basis of the reappraised value, the effect in my opinion upon the user of the public utility

service would be that he would be paying a pro rata proportion of the value as determined by the appraisal. That is the principle that I believe has been approved by the courts. I think it is fair. In such circumstances the user of the service is not investing money in the company as he pays the rates, but is paying the investor for the use of his [fol. 655] property. He is not investing to the extent that he is paying for depreciation on a basis of the depreciated value above the former value. If the courts hold that the owners of a property are entitled to a return upon a rate base determined from current replacement value, then that property certainly belongs to the investors. In a case like this I would say that the depreciation reserve clearly should be figured on current replacement value. (T. 751).

The purpose of a depreciation reserve is to reflect the accrued depreciation existing in a property. The object of making an allowance for it is to distribute more or less evenly over the life of a property the losses in value. Assuming that a building worth $100,000 has a 10-year life and for simplicity assuming that it has no salvage value my straight line method would, at the end of five years, have allowed for depreciation reserve $50,000. (T. 752). Then assuming that there were a proper reappraisal such as the Secretary of Agriculture might make resulting in a new value of $100,000, the amount of depreciation to be allowed would depend upon whether or not the new appraisal were set out on the books. If it were it would be set up for some purpose. If $50,000 be brought back into the books and the face value is shown as $100,000 it certainly must come off somewhere and the only way I know of getting it off is through depreciation, but naturally we will have to write it off again. (T. 753). Assuming that the remaining life was still only five years we would naturally charge off $20,000 at the end of the year and at the end of the life of that building we would have accumulated altogether $150,000 though the assumption was that the original asset was worth $100,000. Under those circumstances if the depreciation reserve has been collected through rates, the patrons of that utility owning such a building would have [fol. 656] returned to the utility $50,000 more than the building cost. Assuming further that the utility had been receiving a fair return upon the property the question of whether this method of handling depreciation is fair has

been answered by the courts. (T. 754). I think it depends altogether upon whether a regulated industry is entitled to a return upon replacement value. If so, that answers the question. I think the earning of a fair return is related to the amount charged for depreciation. Everything will be out of joint if all the computations are not based upon the same base. I don't understand that there could be any income from the funds connected with the depreciation reserve, but aside from that it is my opinion that a utility is entitled (T. 755) to earn upon replacement value a fair rate of return with depreciation computed on the straight line basis. Replacement value might be more than cost and it might be less. It would be possible for a company to invest any funds which it might have in its possession but I am a little doubtful as to whether it could very well set aside any particular earnings as representing an earning from a depreciation fund which it could add to a fair return. I don't think that has any part in the computation. Good business prudence would lead a company to put to work those funds which had been set apart or allowed as a part of the depreciation reserve in the same way that it is desirable for the company to keep any funds working. (T. 756). It is possible that a company would be earning something from the funds provided by the depreciation reserve if a corresponding amount had not been expended in replacements, always bearing in mind that we can't ear-mark those funds.

Returning to the illustration of the $100,000 building which had been depreciated $50,000 and then replaced at $100,000, I think the question of whether it is fair to ask [fol. 657] the patrons of the utility to return to the company $150,000 for a building which cost $100,000 has been answered by the courts and is something which works both ways. If replacement is the correct basis it would apply whether it was higher or lower than cost. It is very much like a building one might own. It may have cost him in prewar days $100,000, but has a replacement value today of $300,000 and a corresponding rental value, I think that anyone owning such a building would think that he was entitled to a return on the $300,000 regardless of the fact that it cost him $100,000. In saying that the question has been answered by the courts I mean answered in the way that I have stated it and that I agree with the courts (T.

757). In case of a building which has decreased in value, the circumstances would be reversed. In other words the owner of a property which enhances or decreases in value, due to extraneous circumstances, either benefits or is injured by reason of his ownership. It is one of the inherent factors of the ownership of property. If the owner assumes the risk of declining value he surely would be entitled to the benefits from the enhancement in value. Such a decline may be brought about by a general trend in prices. We have seen a gradual decline in prices since the peak following the War. In a public utility other factors which might cause such a decline may be obsolescence or advances in the art (T. 758).

"Q. So then, I will ask you again this question—that in your opinion you think it is fair to charge the patron of the utility, in addition to reasonable rates, the depreciation figured on a straight line basis, and if there has been an appraisal of property showing an appreciation in value, a depreciation reserve allowance on the appreciated value, and any additional income it may be able to earn as a result of its ability to so invest depreciation reserve funds in [fol. 658] securities or other forms of income bearing property, is that correct?

"A. In the first place, I think that the illustration that has been used is perhaps a little exaggerated; in the second place, I think that we might give this application to the situation of the industry that is being regulated for the first time. In such a case I don't think that what has gone before has any place in the picture at all, any more than in the tax law, what had gone before had any relation to the fixing of tax rates. The income tax amendment became effective on the first of March, 1913, and regardless of the fact that entire properties might have been charged off, they were restored to the books and the new starting point acquired at that time. In a case such as this I can see no reason why, if there have been mistakes in the past, if there have been (T. 759) reappraisals or what not, I can see no reason why a company should not be given a fresh start. The stockholders who are to come have nothing to do, perhaps, with the stockholders who have held in the company heretofore."

I mean the company should be given a fresh start from the date the regulation of a particular yard actually goes into effect. No matter what time in the future that is and it would be subject perhaps to an adjustment from time to time. I believe my previous answer took exception to the suggestion in the question quoted above that the patron would be expected to pay, in addition to a fair return, depreciation, for the reason that a fair return would presumably include a proper depreciation. Aside from that it is my opinion that the patron should pay a fair rate including depreciation computed on a straight line basis on a current replacement cost, but I would not be able to agree that there would be further income which would be earned by the company from its investment, or from funds secured through the operations of a depreciation reserve, because under this method there would presumably be [illegible]ds to invest separately, and such funds [fol. 659] as could be available would be merely a part of the working capital flowing through the business in the usual way. The rate base would remain the same, unless upon motion of one of the parties a revised base was allowed (T. 761).

Returning to the illustrations of the building, the original value and re-appraised value, after five years, of which was $100,000, and assuming that the remaining life is five years, so that the depreciation charge would be $20,000 per year, and assuming further that rates are fixed at the end of five years, and the building goes into the rate base at its re-appraisal figure of $100,000, and that the utility is allowed to earn 7%, when we come down to the last year in the life of the building, the end of the ninth year, we would have a building the depreciated value of which would be $20,000, and it might sound correct to say that on that building we would be asking the patron of the utility to pay 7% on $100,000, or $7,000 (T. 762). As to whether or not it is correct, I will say that we are assuming here that the rates were fixed at the year in which the property was appraised, at $100,000. I would assume, at that time, there were other items of property, which, together with this building, might be the entire property. It is hard to assume upon property which is made up only of a single item, in other words. In a property of that kind, we find that it shakes

down after a period of years to a point of normal condition, and, generally speaking, carries along at about that point, you might say, almost indefinitely, perhaps at 75% condition, and that, we might assume, is the point at which, or the base on which, the property is paying the owner, and that without fluctuating greatly the actual value of the property will drop a little and be restored; it will drop a little and be restored; but it is hardly fair, in a picture of that kind, to try to compare the situation [fol. 660] with a single asset, the value of which is diminished until it reaches the point of zero.

That is because any ordinary public utility property is made up of varying types of structures, with varying life periods. With reference to shaking down to normal condition, I refer to the plant as a whole, not the one building (T. 763). You will find property which is nearly 100%, a property which is new, but, generally speaking, taking representative plants by and large, probably the figure of 75% condition after several years' operation would be representative. That part of my previous answer which referred to the maintenance of the property at about 75% condition by upkeep and construction work applies to the property as a whole. Ordinarily, the company would keep it at that condition per cent by repairs and maintenance, and necessary replacements and renewals. Regardless of whether we use a straight line or any other method of figuring depreciation reserve, it is necessary in order to arrive at some conclusion that we use definite life tables on which to base our calculations, if our depreciation computation is related to a definite life in point of time. We may conceivably figure depreciation on a production basis. For example, the linings of a blast furnace might be good for so many loads, and then would have to be renewed, and we might depreciate it on the basis of loads, but generally those methods are not used with respect to showing sinking funds (T. 764), or fixed percentages on a diminishing basis. The straight line method has to be determined on useful life.

The fact that the property may be maintained in 75% condition does not render the illustration of this building altogether impractical, except to the extent that it hardly represents the situation fairly because it would indicate that the public was paying return on a $100,000 basis for

[fol. 661] the use of a property that was worth only $20,000. I did not say that I would not make any adjustment in the rate base for depreciation. I said I would use the same basis for depreciation purposes as I used for the return (T. 765).

If the straight line method were applied, the rate base would remain the same, unless we got to a point where on motion of one party or the other a re-valuation for rate purposes was permitted. I do not imagine that there would be much change necessary if the rates were properly fixed in the first place. I would assume that the actual accrued depreciation corresponded rather closely with the estimate of depreciation, if the property were restored from time to time in about the amount of the accrued depreciation. Thereafter, the net investment in the property would remain about the same, and superficially I can see no reason why there should be any change (T. 766). Assuming that rates were fixed on the basis of reproduction new, less depreciation, and that out of the first year's operations there would be obtained earnings to pay all expenses, and set aside an allowance for depreciation reserve determined by the straight line method, the rates for the second year might be adjusted in accordance with the fair return on the depreciated value of the property as of that date, if one wanted to split hairs, but, generally speaking, I do not think a property will be found running that way.

I imagine that if one visualizes the depreciation of the property as a line, it would run rather swiftly down hill, but the line does not run that way. It is a sort of zig-zag line, a saw-tooth line, if you please. In the early years of the life, it takes a rather rapid down-sweep, and then levels out. Thereafter, with smaller ups and downs, due to depreciation and restoration, it keeps more or less on that level, except for major retirements and abandonments, or [fol. 662] additions (T. 767). Therefore, as a generality, it is my opinion that no adjustment would be necessary, but I do not apply that to particular cases.

Referring to page 1 of Government Exhibit No. 11, the depreciation condition of respondent's property is there shown as about 50%. I do not know what was the per cent condition as shown by the appraisal of the respondent or by the Government (T. 768).

I have been assuming that the auditor for the Government computed the depreciation reserve on the basis of the estimated lives of property, as computed by the Government engineer, and that he took the reproduction new value as fixed by the Government engineer.

I have not been down to the St. Joseph stockyards, and am not familiar with the character of its property, but I am familiar with the types of property in the Union Stockyards at Chicago, the St. Paul Union (T. 769) Stockyards, and the Sioux City Stockyards. Generally speaking, it is to be expected that after the company has been operating for a period of time it reaches a certain basis of efficiency of operation, and its condition per cent from then on remains normal. That is for the reason that current replacements ordinarily take care of current depreciation, and are more or less regular in their occurrence. I have never made any study to determine how long a stockyard would operate in order to reach that basis, but I would say that this particular stockyards has undoubtedly reached such a point. It is my understanding that it has been in operation since 1898. With reference to the showing on the balance sheet, which is page 1 of Government Exhibit No. 11, that the reserve for depreciation is approximately 50 percent of the value of the buildings and improvements, (T. 770) page 20 of the "Stipulation of Values," which is Government Exhibit No. 10, shows the condition percent of the [fol. 663] property as determined by Respondent's engineer, the Government engineer, and also a revision of the Government engineer's estimate on a few units of the property. Comparatively few of those condition percents range as low as fifty; others range higher, some up to one hundred. If a composite figure were taken, it would be considerably higher than fifty percent. The difference between those figures and the depreciation shown on the books would seem to indicate that the depreciation (T. 771) written off heretofore was in excess of the depreciation actually accrued.

It is not necessary that the total reproduction new value, less depreciation, plus the allowance for depreciation reserve, should equal the reproduction new value of the property. In fact, it would be a rare accident if it did. It would be necessary, in order to approximate that total, that the

accrued depreciation on the books should be approximately the amount of depreciation accrued by the engineer's figures. I can see no relationship between the two figures, nor the way in which they are accumulated. The purpose of the depreciation reserve, which is found on the books, is to reflect accrued depreciation existing in the property, and it is quite conceivable that there would be differences, either up or down. The reason for that might be because the company had set up either too much or too little, (T 772) or there could be other reasons. It might be that the base value as used by the company was considerably less than the appraised value. It might be that the rates of depreciation were exactly the same, that is, as used by the company and as used by the engineers, and that the accounting for repairs and replacements had been handled perfectly during all the years. Assume, for example, the base value used by the company was one hundred thousand dollars, that the replacement new value found by the [fol. 664] engineers was two hundred thousand dollars; we might say, speaking generally, that with perfection in accounting methods, and with the use of approximately the same rates, the reserve accumulated by the company would be approximately half of the reserve accumulated by the engineers. If there has been no appraisal of the property and the depreciation has been figured on the same value throughout the period, it would be expected that the relationship between accrued depreciation and depreciation reserve would be closer than when you introduced an appraised value (T. 773). If during that period the property were appraised at a higher value, it would tend to increase the depreciation reserve and would have a tendency to cause the amount calculated on the reappraisal to be higher than that set up on the books. If the amount set up on the books for depreciation reserve reflected approximately the actual depreciation of the plant, and the engineer found a value which was approximately the book value, the reproduction new value, less depreciation, plus the depreciation reserve, naturally would approximately equal the reproduction new value (T. 774).

Assuming that 26 years is the composite life of respondent's property and considering the depreciated value of the property as shown by the books, I cannot estimate how long it will be until the entire assets are wiped out, if the

respondent pursues the same policy in setting up depreciation on its books as it has in the past. It may never be wiped out. Let us assume that the 26 year life which you mentioned is correct, we then reach the conclusion that that being a composite of all the property, that the property is actually being consumed at the rate of 1/26th a year, that that 1/26th amounts to some 136,000 dollars. If this property has reached a normal condition percent, as I think we [fol. 665] can further assume that it has, it must further be assumed that that 136,000 dollars a year has got to be put back into that property to maintain it in efficient operating condition. That may not be put back this year in its entirety, it may not be put back next year, in its entirety, but over a period of years it must be put back or the operating efficiency of the plant will be impaired. Therefore, as I say, the remaining value appearing on the books of the company may and probably would never disappear, but would remain more or less constant, assuming proper accounting methods, and excepting, of course, their additions to plant or retirements.

A comparison of the condition per cent found by the American Appraisal Company with that found by the Government engineer indicates that respondent's property is being maintained in first class operating condition (T. 778). It would probably require an engineer's examination to determine whether there were renewals or replacements that had been deferred and may have to be made at a later date. The Government condition per cent is about 78½, which shows a falling off of 6½ from condition per cent found by the American Appraisal Company in 1922. It would be quite possible that there are certain deferred items which may sooner or later require renewal. The discrepancy between the American Appraisal Company condition per cent and the Stockyards' engineer is only about 2 per cent.

Assuming that the figures on page 54 of Government Exhibit 11 are correct, it would seem that $553,791.71 has been set up on Respondent's books from January 1, 1923 to June 30, 1929, for depreciation reserve (T. 779). The exhibit also shows that the figure for "Retirements and Adjustments" for the same period is $11,957.55. Government Exhibit No. 12 indicates that respondent has charged to repairs since January 1, 1923, $270,390.02 (T. 780). Re-

[fol. 666] ferring to pages 21 and 22 of Government Exhibit No. 11, it shows net additions amounting to $49,489.36 to the plant account since the appraisal, and without referring to retirements, the total additions amount to $66,218.08. That covers a period of 6½ years and would average about $10,000 a year (T. 781). During that same period the repairs would average about $40,000 per year. The depreciation set up, as shown by Government Exhibit No. 12, averages over the same period about $125,000 a year (T. 783). It is a fact that taking repairs, plus the amount set up for depreciation by the Government auditor in Government Exhibit No. 12, determined on the sinking fund basis, is far in excess of the amount expended by the company annually in the past six and a half years for repairs of all kinds, and for additions to property or to plant account, regardless of whether those additions were renewals, replacements, or actual extensions of property, but that I think has nothing to do with the question as to which I have been testifying because there may be accounting errors in the books. There may be deferred maintenance, about which the records reflect nothing. We are assuming, as I understand it, a proper procedure for the company which contemplates the use of proper accounting methods in the future. It is my opinion that the history of the past may reflect something with respect to the probabilities of the future, but I would want to base my opinion on a much further investigation than I can make by looking at a few figures of this character (T. 784). As to whether the figures which have been called to my attention indicate clearly that the allowance determined by the Government auditor in Government Exhibit No. 12 appears to be a liberal allowance for depreciation reserve, I can only answer that, assuming the use of figures which I have before me. As I [fol. 667] have indicated, it had been my understanding that it was the purpose of this investigation to eventually determine and set up a proper accounting procedure for the future, regardless of errors which may have crept into the accounts of the company in the past, and that one of the bases for that future accounting procedure was the estimated life, useful life of the property of the stockyards that has, I have understood Government counsel to just state, is acceptable to the Government and shows a composite life of twenty-six years, from which the only assump-

tion that can be drawn is that the property is actually depreciated to the extent of $136,000 a year. Whether there have been some mistakes in the accounting for repairs and maintenance, as against replacements, in the past, I do not know, but I do know that if the Government estimates are correct, that over the period of years, it is going to require an average of $136,000 a year to make good the losses, due to wear and tear, and that if the company does not receive $136,000 a year, it is not going to be able to maintain (T. 785) this property and will not be properly compensated for the accrued loss. Assuming that there are no errors in respondent's records or accounting methods, I cannot see how the Government allowance for depreciation would be liberal in view of the Government's own figures. In other words, the Government would be in the position of saying, "We admit that the public is consuming $136,000 of your property every year, but we are proposing that you be paid for it at the rate of 40 cents on the dollar." There may have been charges to the repair account in the past that might properly have been made to the depreciation reserve. I cannot tell from this record, cannot tell without an examination. In view of these figures it is quite possible there may even be a deferred maintenance that I can tell nothing about from these figures.

[fol. 668] Respondent's Exhibit No. 10 shows that the estimated life of the Exchange Building, as agreed upon by Respondent's and Government's engineers, is 50 years (T. 786). As an accountant I would probably charge depreciation at the rate of 2% per year. For the estimated age of the building, 30 years, a gross of 60% of the value of the building would have been charged. There may have been charges against that reserve for replacements. Government Exhibit No. 10-A shows condition per cent as calculated by the Stockyards to be 89, and by the Government 70. That indicates to me, as an accountant, that the building has been very well maintained.

Examples of items which I classed as repairs, other than those mentioned in my direct testimony, are the replacing of minor machinery parts, minor plumbing repairs, a few shingles on the roof, and a few boards on the floor (T. 787). In drawing the line between items which should be classed as repairs and maintenance and those which should be regarded as renewals and replacements and charged against

depreciation reserve, accountants make the general test that items which go only toward maintaining the property in its present condition should be charged to repairs, while those that tend to improve the property or restore it to some extent to its original condition are classed as replacements. Ordinarily the life of the item which is installed as a repair or replacement is not taken so much into consideration. The reason is that the repair or replacement attaches itself to another item of property. We do not think of it exactly in those terms. It is possible that we might classify an item as a repair and yet it would have a considerable life period (T. 788). In the event that an engineer makes an appraisal of the property and includes the item in his reproduction new value on which depreciation [fol. 669] is allowed, I cannot say that the charging of the addition to the repair account would result in allowing for it twice. The appraisal in this respect offers no different aspects than are involved in any adjustment of values through an appraisal (T. 789). It is a matter of common experience that painting will last for quite a few years. I would charge that to repairs. I should think that when an engineer is placing reproduction new value on the property, he would take into consideration the condition of the property, which would undoubtedly involve the condition of the paint, and I would assume that he would make allowance for that in making his value. Determining the depreciation reserve on the reproduction new value and charging the painting to operating expenses annually results in making a charge each year for that paint, and also originally it was charged as an operating expense when it was put on (T. 790).

Referring to the different units of property shown on Respondent's Exhibit No. 10, I find that the commission men's, traders' and packers' pens in the cattle, sheep and hog divisions, generally speaking, have a life period shorter than buildings like the Exchange Building, barns or sheds, but I do not know that the facts would show that on the composite basis, taking all of the pen (T. 791) areas into consideration, that your life is so much shorter, as you have involved a great deal of plumbing, pavement, and structures of various kinds. The pens themselves represent a substantial proportion of the investment in property for these respective areas. From page 54 of Government

Exhibit No. 11, it appears that in the past 6½ years $4,070.53 has been written off as retirement of pens. That would indicate that unless there has been some prior major renewals, these areas are being maintained in their service-[fol. 670] able condition through the repair account (T. 792).

I did not state that if the allowance for depreciation for Respondent were to be made on the sinking fund basis that company would have to pay a higher income tax. I said that if the sinking fund method had been applied in the early stages of the income tax law, during the years of high taxation, it would have resulted in a higher tax. With the straight line method the same amount is charged annually to depreciation reserve (T. 793). Assuming that there are no material changes in the property by way of additions and retirements, whether under the sinking fund method the same charges would be made from year to year to depreciation reserve would depend upon how one is considering the sinking fund method. The sinking fund method as proposed by the Government in this case contemplates the setting up and collection from the public, rather, of a regular amount each year, which it is expected would earn an income. A sinking method as it is often discussed, and more discussed than used, is a method by which the heavier charges are thrown into the later years of the life of the property. That comes about because the annual charge is arrived at by taking each year the theoretical addition to the principal of the sinking fund, plus the theoretical accruals of interest on all prior accruals, therefore the amount of the annual charge increases from year to year. You would use the same installment allowance each year even in computing the method that I have just described, (T. 794) but the total depreciation charge as finally arrived at for each year under that method would be different, in that you bring into that charge the accumulated interest for the prior period. If a regulatory body were to adopt the sinking fund method and prescribe it for a utility, it could be [fol. 671] set up on the books all right. There would be complications in connection with the proper accounting for retirements of property. That problem would be different from what it would be under the straight line method, in that under the sinking fund method you would have to compute the accrued depreciation on retirements by the use of compound interest methods all the while. As I

understand it, the depreciation reserve would be determined here upon a composite basis rather than with respect to the different units of property, but as a foundation for that we would have the condition and the value of each unit of the property (T. 795). If one had nothing else to do, it would be entirely possible to make a sinking fund for each unit.

If we had a building worth one hundred thousand dollars and had already set up on our books a depreciation reserve of sixty thousand dollars against that value, and then the building were removed, there would be a discrepancy between the amount set aside and the cost of the building of $40,000.00. As an accountant, I would charge that item to operating expense. Even in a rate case I do not see what else one could do. The public has been using the property of the company. It is necessary in the interests of the public, as well as of the company, that the building be removed. It is a natural expense of operation. The cost of it has not yet been recovered. If the public is to pay fairly for the property, I do not see that the public should expect the stockholders to donate that for the benefit of the community. If that were charged into operating expenses and rates fixed on that basis, I do not see that it would result in charging the patrons for it every year (T. 796). If there happened to be an extraordinary charge in the year in which rates were being fixed, that would be merely a matter of adjustment. Whether this write-off of $40,000 would [fol. 672] be an unusual item would depend upon the circumstances. In some companies it might be a mere drop in the bucket. In a hundred million dollar company, for instance, a forty thousand dollar charge of that sort is only a small incident in its daily accounting, whereas in a hundred thousand dollar company a forty thousand dollar charge would be a pretty large item. I would consider it a large item for a company like Respondent (T. 797).

The maintenance method of determining the depreciation reserve is not used for the purpose of accumulating reserve. It is used to take care of depreciation and it is simply the theory of charging direct to expense replacements as they occur. I do not recall that I have ever encountered that method in practice, except in text books. I have never encountered a method whereby a certain percentage of gross income is set up to cover the items of re-

pair and depreciation. I have never found any public utility that used it (T. 798).

[fol. 673] Redirect Examination.

Referring to the building which, after being depreciated 60%, was destroyed, in fixing rates that would be simply a matter of adjustment over a period of years to give it equitable effect. It would have no affect upon the method to be followed in creating the depreciation reserve (T. 803).

I think it is entirely fair to write off depreciation reserve upon the present day value of the property, if it has increased in value. If a building which was originally worth $500,000 has been appraised and is now worth $700,000, and is bought by a second man, this latter figure would represent the actual cost to the second man (T. 804). I know of no accounting practice which would require that man to write off depreciation on less than the cost of the property to him. If the value of the property to the first man is the same as the cost of the property to the second man, I could see no reason for a different treatment with respect to depreciation. If the conditions were reversed and the property came down in value, the same principle would [fol. 674] apply. I can see no logical difference between our present day reproduction cost for the purpose of charging the public a fair return, using the same figures for the purpose of charging the public annual depreciation (T. 805). I would not think it common sense to charge the pre-war price for hay as an operating expense. I cannot see any difference between that and charging pre-war basis of wear and tear on a building. It would be obviously unfair to take a rate of return of 4% or 3% upon the value of the property and sell that to the stockholders upon the assumption that if they will invest it that by compounding it annually in the course of time they may get a 7½% return. Investors should be entitled to their 7% per annum as the years go by. It would belong to them from year to year. It would seem such a proposition is very senseless (T. 807). You could not sell securities to anybody on that basis. If a man is entitled to 7%, he is entitled to 7% this year. Perhaps the only difference between that example and the Government method of setting up depreciation reserve is that in this particular case, as I see it, there would be no amount which would be earning an income.

Even in case of your stockholders, you are assuming that he got his 3 or 4% which could be invested, but in this other case the amount which would be paid in would immediately have to be used for some other purpose; that is to say, in the making of renewals or replacements so that it would be utterly impossible for it to accumulate. It is my opinion that the depreciation reserve as set up in that manner would probably be even more grotesque than what I have said about rate of return (T. 808). In other words, although the property is being worn out at the rate of about $128,000 a year, from some sort of a charge account we will get that ten years from now instead of this year. The books of [fol. 675] the company are usually closed for all purposes at least once a year, and it is expected that they should represent the condition of the company at the end of the year. If the property were depreciating $128,000 a year, and a credit was made for the depreciation reserve account of $63,000 a year, the books would show an inflated value of the property (T. 809). In my opinion, it would probably be as logical to apply this sinking fund method to operating expense as to apply it to fixed assets, because after all there is no essential difference between assets when you come to compute the income of the corporation. They are all being worn out and consumed in the service, some sooner and some later. In all these illustrations given, the result is not only to postpone the payment to the owner of an amount which he ought to receive beyond the year in which that expense occurred, but to refuse it altogether.

If errors of any kind have occurred, either in the mere bookkeeping or in the amount of depreciation reserve set up in past years, that would not influence my opinion as to the propriety of the method to be followed in the future (T. 810). I understand that we are trying to arrive at a sound method for the accounting of the affairs of the company in the future, and if we are going to do that we ought not to use an unsound method which we think is going to be added to on this point and subtracted from on another point with the hope that we are going to find ourselves in approximately the correct position when we get through, but we ought to start off on a fundamentally sound position with a fundamentally sound theory and proceed along fundamentally sound lines. The fact that rates in the past had been excessive or deficient would not keep the Governmental

authority from fixing reasonable rates in the future. If Mr. Henrici's life figures set out in Government Exhibit [fols. 676-739] No. 12 are correct, there is nothing in the books of the company that could vary my opinion as to the amount of the depreciation reserve necessary on those particular items (T. 811). The only thing that could vary the amount of depreciation that should be set aside would be the discovery of an error in the estimated life of the particular pieces of property. I have here to start with the very definite fact that the property is wearing out to the extent of a certain number of dollars each year, and to my mind that is as simple as the A, B, C's. If the property is wearing out to that extent, obviously it must be replaced to that extent in order to keep it in serviceable condition, and if it is being replaced to that extent the public must pay for it in that same amount.

Recross-examination:

As to whether I regard a sinking fund method of depreciation exactly the same in principle as the sinking fund return, of course, no one ever heard of a sinking fund return. That was used merely to draw a comparison. I do not see as there is any comparison except that they (T. 812) both involve the use of compound interest computation, and I think it is to be assumed that the original amounts will accumulate to larger amounts in the future.

[fol. 740] Income for Rate Making Purposes

M. J. O'Malley, a witness called by respondent, after being duly sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph, Mo., and am auditor of the St. Joseph Stockyards Company and the St. Joseph Belt Railroad Company. I have supervision of accounts with full charge of the office reports and the collection thereof. [fol. 741] All the records of the company are made under my direct supervision. I am familiar with and have examined Government Exhibits 11 and 12 (T. 1080). I have prepared an exhibit similar to Government Exhibit 12. This exhibit is marked for identification Respondent's Exhibit

11. In preparing this exhibit I started with the net income as shown in Government Exhibit 12, as agreed, which is $252,929.09. I have made certain additions and deductions to this amount to produce a net operating income for rate making purposes. These additions and deductions are set forth on page 1 of this exhibit. Page 1 covers the year 1928 and page 2 covers the first six months of 1929 (T. 1081). The first item is casualty insurance refund. I have taken the amount of refund that we received for a period of five years because I thought that was fair on account of the variation in the amount from year to year. The dividends vary and the average for five years would be $5,550.43. We get this refund at various times, sometimes November or December and sometimes in February. It is generally for the previous year. This amount of $9,799.43 was received sometime during the year 1928 but I do not know the exact date. As a rule it would apply to 1927. I felt that it was a fair proposition to average these refunds over a period of years.

The amount of depreciation reserve is taken from Respondent's Exhibit 10 (T. 1082), $126,980. That was given to me by Mr. Kosters. He stated it was a compromise figure as to amount. The figure of $128,035.80 was the amount actually deducted for depreciation reserve in the year 1928 as shown by the audit.

The details of the next item, O. R. E. insurance, outside real estate insurance, are shown on page 3 of Respondent's Exhibit 11. The same is true in respect to repairs and [fol. 742] miscellaneous expense (T. 1083). I got my classification of outside real estate from Mr. Kosters. It is based upon the contentions of the respondent in this case as to the land which should be included as used and useful stockyards land. I have made no classification of my own.

The details as to fiscal agents and trustees are shown on page 3 of Respondent's Exhibit 11 and the sum is taken from the audit, page 3 of Government Exhibit 12.

The next item of taxes, real estate and personal property, are shown on sheet 4 for 1928 and sheet 5 for the first six months of 1929 (T. 1084). This follows the same classification of land as used and useful property as was given me by Mr. Kosters. Mr. Kosters gave me all the information on sheet 4 with the exception of city taxes, the last item. They come under my supervision. Park maintenance tax and real estate tax I took direct from our vouchers in the

amount of $1,215.77 (T. 1085). On page 5 of Respondent's Exhibit 11 I took the figures Mr. Kosters gave me which are shown on page 4 and made a comparison as to the rate and made the deduction which would naturally follow on the same property. He only figured the 1928 tax on the outside property but the basis was so apparent that I could follow the same system for the six months of 1929. If Mr. Kosters' figures on page 4 are correct my computation would necessarily produce correct figures for the first six months of 1929.

The item of bond interest is the same figure which was added to the net income in Government Exhibit 12 on page 3.

The amount of outside real estate depreciation of $302.75 was arrived at as follows (T. 1086): Government Exhibit 11 shows the various items that apply to Lake Avenue house, farm house, and field hay barns, and we used those [fol. 743] figures and applied our method of depreciation as applicable to them. The details are as follows: Frame farm house $174.54 at 6 per cent; brick house $275.60 at 3 per cent; water lines $55.00 at 4 per cent; total $114.96; field hay barn $3,129.84 at 6 per cent or $187.79, which makes the total of $302.75. One-half of that sum was used as the basis for the first six months of 1929. Those items are found on page 9 of respondent's Exhibit 11, under miscellaneous items, farm house $1,878, hay sheds (farm) $3,054. Those two items include all the items I have mentioned above (T. 1087). My deduction for outside real estate depreciation is the amount covering those particular buildings, which was actually deducted in the year 1928 as shown by Government Exhibit 11. Referring to page 9 of respondent's Exhibit 11 there would probably be some slight readjustment of this amount of $302.75. The proper amount would be 6 per cent of the sum of the two items as they appear on page 9 of respondent's Exhibit 11. That figure is $295.92 as against $302.75.

The details as to the items of rent and lease income appear upon page 6 of respondent's Exhibit 11 (T. 1088). I followed the same classification as to outside real estate as I explained before. The right-of-way rental is paid by the St. Joseph Belt Railroad Company. The item interest received is identical with the amount appearing on page 3

of Government Exhibit 12. The same is true of bad debts.

Pages 8 to 10, inclusive, of respondent's Exhibit 11 were prepared by Mr. Kosters before his compromise. My pages 8 to 10, inclusive, should be modified to the extent as would be apparent from an examination of respondent's Exhibit 10, which contains the compromise figures (T. 1089).

[fol. 744] Cross-examination:

Referring to the item of $9,799.43, which is the first item on page 3, of Respondent's Exhibit No. 11, I said that that was applicable to the year 1927. We received it in 1928. That is the reason I carried it as it is on the exhibit. Those refunds are all overlapping. This is the refund which accrued on the 1927 insurance (T. 1090), but was paid to the stockyards company in 1928. That would be true in the same way of the other years stated, but the refund is not always received at the same time of year. We have received a casualty insurance refund for 1928. It is shown below 1929 as $5,066.12. Our insurance policies, I think, fall due in February. Sometimes the insurance is applicable to ten months of the previous year and two months of the following year, but ordinarily we speak of it as applicable to the year in which the insurance is written. The policies are written for 12 months' periods. We pay a premium rate to the mutual insurance company, and then receive dividends from the company. If it were not a mutual company, probably we would not receive anything (T. 1091). The reason why I regard it as proper to average those refunds over a five-year period is because there is such a variation in the amounts. This large amount, for instance, of $9,799.43, was possibly paid to us out of the reserve fund that has been created by the insurance company. Compared to the other refunds it is evident that that is an unusual amount for the stockyards company to receive. There has been some variation in the premiums paid by the company annually during past years (T. 1092). I will furnish for the record the casualty insurance premium paid by the St. Joseph Stockyards Company for the years 1924 to 1928, both inclusive, being the years shown on Respondent's Exhibit No. 11, page 3.

[fol. 745] The expenses shown in the profit and loss statement for the year 1928 are taken actually in that year, and not averaged over a five-year period, but it is my idea that extraordinary items, or items of extraordinary size, should

be averaged over a period of years, and not included in any one year. That would be fair and equitable on account of the variations in the casualty insurance. As to whether the same principle should apply to any unusually large items of expense, that may have been incurred by the stockyards company in 1928, I am dealing only with casualty insurance. I would not apply the same principle to other items (T. 1093), because there is no doubt that the expense was incurred within the year. We receive the casualty insurance refund during the year. As to whether it accrued within the year, I have no means of knowing how the casualty company accrues this amount of dividends. The only reason why I regard it as fair to average these casualty insurance refunds, and not to average extraordinarily large expenses, is that we have casualty insurance, but we haven't these other imaginary items. If we did have them, I would not agree wholly that the same principle would apply, unless it had something of a nature similar to those. Then, I might consider it.

The reason the item of bank exchange $28.10, appearing on the third page of Government Exhibit No. 12, is not eliminated in any part of Respondent's Exhibit No. 11 (T. 1094), is because the item is very small, and I do not know of any concern that does not have similar charges. It seems to me that it is a very necessary expense of companies which they all have to bear. For instance, if we were to pay a farmer's charges, and he would send us a local check, we would have to pay exchange on that local check. I mean that the bank charges an exchange fee on that, and [fols. 746-765] that is one of the ways in which the item arises. Also, we might cash, as a courtesy to the farmer, a check drawn on his local bank, and that would be another way in which that item would arise.

The initials "O R E" appearing on Respondent's Exhibit No. 11, and Government Exhibit No. 12, mean "outside real estate." We have been carrying that on our books. The difference in the total amount, between the eliminations in outside real estate made by me, and those made by the auditors for the Government, is due to the difference in our opinions as to what ought to be considered used and useful property (T. 1095). I suppose that it is understood that each one of those steps of elimination is tentative and subject to final determination by someone else who will review them, and tell us what the decision will be (T. 1096).

Direct examination:

We actually received in the early part of 1929 casualty insurance refund in the amount of $5,066.12. That applies as nearly as I can allocate it to 1928 business and possibly two months of 1929. It comes pretty close to the five-year average (T. 1096).

[fol. 766] Used and Useful Property

Transit House

C. F. EMMERT, a witness called by the respondent, after being sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph, and am manager of the Farmers Union Livestock Commission (T. 1112). We simply handle the stock for the members of the different farm organizations that are with us in the business down there. We are simply a trade name. There are ten different State-wide organizations, and we are supposed to handle the livestock [fol. 767] from their members. I have been manager about eleven years. Prior to that I was in the commission business at St. Joseph. I have been at the yards there since 1900, and during all that time I was either employed by some commission firm, or was in business for myself (T. 1113). I have been continuously at the St. Joseph market since 1900, except for a few months when I was on a little farm. I was there when the Transit House was built. I am fairly familiar with it at the present time. I have an opinion as to whether or not it is necessary for the St. Joseph Stockyards Company to maintain this hotel. I think it is a great convenience for the people who come there. It would be a serious detriment to have it removed for a number of reasons. Years ago most of the stock that came to this market was shipped in cars. Now, perhaps, half of the hogs and 20% of the cattle arrive in trucks. Those trucks keep running day and night, as a rule. They try to make as many trips as they can, in order to get as much service out of their trucks as possible. It is necessary for the truck drivers to get some rest. I think that the Transit House is pretty generally filled up most of the nights when the roads

are so that the trucks can get in (T. 1114). I think that the patrons arrive mostly during the night. I am speaking mostly of truck drivers. The shipper who comes with his livestock by train gets in early in the evening, about seven, eight, or nine o'clock. Quite a good number of my patrons ship livestock by these trucks. I certainly think that the maintenance of a Transit House by the stockyards company is of benefit to the producers who patronize this market, for the one great reason of the physical location of the stockyards. It is four or five miles from the city. If the men could not get in a Transit House, or some place like that, they would have to drive clear back to town before they could get any accommodation. I would not exactly [fol. 768] know about the parking of trucks up town (T. 1115). I have noticed signs on the streets about parking, and there are, in effect in St. Joseph, regulations about parking on the street. The stockyards company has a place where these trucks can be parked over night right on the stockyards property (T. 1116).

Cross-examination:

I do not know what value has been placed on the Transit House by the appraisers who have appraised the stockyards company for rate making purposes. I do not know how much rent the stockyards company receives for the Transit House (T. 1116). I would think that if the evidence shows that the value of the Transit House, or if the Secretary of Agriculture should find the value of the Transit House, reproduction new, less depreciation, to be $100,000, and the evidence shows that the stockyards company receives only $100 per month rent, that would be a small return on a building of that value, and if the Secretary of Agriculture should allow the stockyards company a fair return of 7 or 7½ per cent on the value of its property, that rent of $100 per month probably would not equal 7½ per cent, or even 7 per cent, on the $100,000 value. As to whether the deficiency would have to be paid in the form of rates by the shippers of livestock to the St. Joseph Stockyards Company, the shippers pay certain rates, of course. I don't know how these rates are applied at all. I don't know whether the things above stated would tend to increase the rates to be paid by the shippers generally (T. 1117).

Thereupon, at the suggestion of counsel for respondent, counsel for the Government made the following statement:

In connection, Mr. Emmert, with what was said by Mr. [fol. 769] Rynder, I would like to explain to you that the St. Joseph Stockyards Company is not asking at this time any increase in its rates and charges for yarding and feeding livestock, and so forth, so far as I know. The Secretary of Agriculture is having this inquiry conducted for the purpose of determining whether the rates and charges of the St. Joseph stockyards are just and reasonable. As a result of this hearing, the Secretary of Agriculture may, under the law, do one of three things. He may possibly reduce the rates, he may possibly let them remain as they are, or may possibly increase them. I just make that explanation so that you will not misunderstand my questions.

Counsel for respondent stated that "We might add to the explanation that inasmuch as we are not asking any increase in rates, the stockyards company considers the likelihood of an increase in rates to be not at all probable" (T. 1118).

In view of the explanations that have been made, I understand that, if the Transit House and the stockyards are operated together, any deficiency there might be in the income from the rent of the Transit House, as applied to the expense and charges of carrying that piece of property, including the fair return on the value of it, would have to be paid to the stockyards company in the form of yardage and feed charges. I have not considered at all whether the extra charges of carrying the Transit House should be paid by truck-in livestock only, but I don't believe that would be the proper way. I think it ought to be spread over all the shipments. That would probably apply to a sheep man out in Wyoming, who never comes to St. Joseph, as well as to a neighboring man who ships by truck (T. 1119). I presume that whether it is usual for businesses to maintain a hotel for their customers would be determined by the loca- [fol. 770] tion of the business more than anything else. I know of no business, other than a few stockyards, which maintains a hotel for its patrons. Farmers frequently haul their grain to an elevator. I presume elevators do not maintain hotels, but that would be a different proposition altogether, because they have a commodity that need not be marketed as quickly as possible. They can take an entire

day for a truckload of grain, for instance. I presume farmers frequently haul into the produce markets (T. 1120). They haul highly perishable commodities. Fresh fruits and vegetables are not as perishable, to such considerable an extent, as cattle, hogs, and sheep. I don't know whether those who haul produce generally come in during the night. I have no information as to whether produce markets open in the morning with produce that has been hauled in during the night. I do not know of any such market that maintains a hotel for the truck drivers (T. 1121).

I presume the commercial trucker is more frequently there than the truck driver who owns the stock he hauls. The commercial truckers make regular trips into St. Joseph. Whether they come once a day depends on how the roads are, but, as a rule, they do come regularly the year around. I do not know whether they are strangers in town. I would think that the man who goes to St. Joseph regularly, night and day, the year around, ought to get to know the city (T. 1122).

I cannot recall just now any other stockyard, except St. Joseph, that maintains a hotel. Livestock is trucked into the other markets. In some of them the volume is just as great as at St. Joseph. I think that is not true of Kansas City. At Omaha it is pretty heavy. I don't know whether they have a hotel. I do not know how about Sioux City. I would think that the fact that they do not have hotels does [fol. 771] not deter the truck drivers from coming to Omaha and Sioux City (T. 1123). If the Transit House were closed, I do not think all the truck drivers would stop coming to St. Joseph. Possibly some of them would. The closing of the hotel would be quite an inconvenience, but I do not know that the producers of livestock would be injured. It would be an inconvenience to the truck drivers and to the producers, because when the producers come in with their stock they want to be at the stockyards early in the morning to see it handled, and they can get there a good deal quicker from the Transit House than from uptown. Quite a good many producers come in with their stock. I would not say that as many producers as truck drivers come in. It is a reasonable conclusion that the men who want to stop at the Transit House ought to pay a fair cost of operating that hotel, and not put it on people who don't come there and don't want to stop there (T. 1124).

Redirect examination:

I haven't any idea what the patrons of the Transit House pay. I am not qualified to answer any question about that. I wouldn't think that the patrons of the Transit House that I know about would pay from four to five dollars a day to stop there. Assuming that they would not pay enough to run the hotel and make it profitable, I am not qualified to answer whether or not the hotel should be abolished. I certainly think it is a substantial benefit to this market to have it in existence. I would dislike very much to see it abolished.

[fols. 772-774] Income for Rate Making Purposes.

Allocation of Taxes

S. F. Kosters, upon being recalled by Respondent testified in substance as follows:

Direct examination:

[fol. 775] Used and Useful Property

Transit House

I am familiar with the regulations in respect to overnight parking. It its prohibited all over the city, even in the residential district. Throughout the business district, parking limited to one hour, and those limits have recently been expanded. There is no place in the City of St. Joseph where you can leave an automobile on the street all night long. An ordinance has been in effect for a great number [fols. 776-779] of years, but only recently has it been enforced (T. 1161).

[fol. 780] Going Concern Value

Recovery of Receipts

Mr. E. N. Carroll, a witness, called by the Respondent, after being sworn testified in substance as follows:

Direct examination:

I live in St. Joseph, Missouri (T. 1172). I am Traffic Manager of the St. Joseph Stockyards Company and the

St. Joseph Belt Railway Company. My principal duties are getting receipts to the market. The job of Traffic manager would be comparable to sales manager in any other business. The principal duties are securing business. The first thing is to get the business, and of course you can only take care of it after you get it so as to hold it. I would be interested in the care which was being taken of the business, and would naturally follow along to see that the cus-
[fol. 781] tomers are kept satisfied (T. 1173). I have been in the traffic department of Respondent for 20 years, and Traffic Manager for 14 years, and during all of this time I have been actively engaged in securing or attempting to secure business for Respondent. I heard the testimony of L. R. Howson. Prior to the hearing Mr. Howson consulted me in reference to the problem of getting back the business of Respondent, in case it were assumed that it were gone. Mr. Vant, Mr. Barkley and myself conferred about it. As a result of this conference I gave Mr. Howson the composite opinion of the three of us as to the rapidity with which the business of Respondent could be regained. I told him that we estimated that we could recover the first year 25% of our business, and within five years, around 80% of our business, and we can probably reconstruct our business as it is (T. 1174) today within the period of eight years. We estimated that in Zone 1 for the first year we would secure 80%; Zone 2, 15%; and from Zone 3 a negligible amount. We estimated that out of Zone 1 we would have secured 100% of our business in five years; out of Zone 2, 80%; and out of Zone 3, 65%. Zone 1 is within a radius of 100 miles, because the first divisions of the railroads entering St. Joseph are around 100 miles. That zone would take in all of the truck business. The next zone was constructed on railroad divisions also and extended to a distance of 350 miles, which approximate the next two railroad divisions. Beyond that we considered Zone 3 (T. 1175). The opinion I gave Mr. Howson as the composite opinion of Mr. Vant, Mr. Barkley and myself is also my opinion. If Mr. Howson had relied upon my opinion, or the composite opinion I gave him, the length of time he used in recovering the business would have been three years more.

[fols. 782-787] I also gave Mr. Howson the number of cars that would be in each zone, and he figured the number of

cars that would be recovered from the percentages we gave him. I also gave him the figures from which he made his assumption of the receipts for the next four or five years, and added in the drive-in receipts and reduced them all to cars. The total cars for 1928 were 54,275 (T. 1176). For the year 1929 I have taken the actual receipts up to and inclusive of December 10th, and estimated the remaining period of the month on the same basis of receipts for last year. That is just about the way we are running. That would make a total for this year of 54,762 cars (T. 1177). The actual receipts up to December 10th was 49,992 cars, and the estimate for the balance of the month was 4,770 cars. This estimate was based on the actual receipts for a like period in 1928.

[fol. 788] Cross-examination:

I said I had been in the traffic department of the St. Joseph Stockyards for 20 years. I was not connected with any stockyards just prior to that time, but I had been employed by the Kansas City Stockyards a good many years before. My real stockyards experience as far as anything I would have to say to Mr. Howson, would extend over this 20 years with the St. Joseph Stockyards. I have never been connected with any yards except Kansas City and St. Joseph.

I was asked to give an estimate of the time it would take to reproduce the business at the St. Joseph market if it was out of existence for a year and was then brought back with the packing houses like they are today (T. 1192). I was told to assume that the packing houses and the stockyards were re-established and then we were to reproduce the business of the stockyards company from that time on. In making my estimate I did not consider whether the packing houses were in operation or not. I think the packing houses would have to keep the steam up and one thing and another to keep up their machinery, but I do not think the packing houses we have could operate without an assortment of livestock, and they couldn't get the assortment in any way other than through public markets (T. 1193). As to whether if the packing plants could not run full force they would not run at all, I do not know what they would do. I am just trying to follow you along, but I do not now know what the packers would do. I do not believe, how-

ever, that they would operate. I do not think the operation or non-operation of packers during this year would have any effect on the rate of recovery of receipts on the new stockyards. The question as to whether it would make any [fol. 789] difference whether some hundreds of thousands of head of livestock were already coming here, or whether they had all been diverted to other markets, is not anything like what I was asked to make an estimate on. If you are going on the theory that while the stockyards was out business, the packers had built up a direct buying proposition, we probabably never would get any receipts (T. 1194). I was not going on any assumption of that kind. I was going on the assumption that all livestock had ceased coming to the St. Joseph market for a year. I was asked to estimate on that.

In all my experience I never knew a big stockyards anywhere comparable to St. Joseph to close down for a year nor a month. I do not know but what maybe Chicago Stockyards did close for a period on account of the foot and mouth disease but that is so long ago I do not remember for sure. I do not know the facts concerning that (T. 1195). So far as my experience goes I have no experience whatever to draw upon as to what happens when a stockyard closes. I have no past experience of myself or anyone else known to me upon which to base an estimate of what would happen if a stockyard closed for a year.

The railroad divisions mentioned, with respect to Zones 1, 2 and 3 for the recovery of receipts, refers to the freight division on the railroads that serve this market. That also has reference to the breaking point of freight rates on livestock, such rates break around 100 miles. That is, we are grouping with Kansas City usually within 100 miles (T. 1196). The operating division of the railroad first controlled our zone and we took into consideration the rate break but the principal thing was the operating division (T. 1197). Zone 2 takes in the second and third operating division usually. Zone 3 includes all of the rest of the country.

[fol. 790] By the statement that I have no past experience of myself, or anybody else known to me upon which to base an estimate of what would happen if a stockyards would close for a year, I mean I do not know what happens when a stockyards closes nor have I known anyone else

that knew one to close. I did not mean in giving this estimate to Mr. Howson I had no knowledge and experience upon which to base the estimate. I based it upon the knowledge and experience I gained on the St. Joseph Stockyards. What I meant was that during that time I had never known a stockyards to close or knew anyone else who had had that experience (T. 1199). All my experience has been in trying to increase the receipts to an already established and going stockyards. I never undertook to get receipts to a comparatively new stockyards that had none.

There are a great many factors that can influence the incoming receipts to a market. One of the major factors is confidence of the country that the market prices are comparable with other points. For instance, if the packers operating the St. Joseph market would decide to increase the market prices 10 cents a hundred over and above those ruling at any other market, I would think that would get all the receipts there were in the territory. But I would not think that any buyer of livestock, whether it is a packer or anybody else, would deliberately go out and pay more than the market value, if they knew it (T. 1200). I was asked to make my assumption on the same continuance of the situation in respect to the buying policy which now exists. I never knew packers to increase the market price greatly to attract receipts where there is a scarcity of livestock in the territory naturally tributary to some stockyards or packing center, in order to keep their plants going, rather than to reship from other markets. Thereupon the witness was excused (T. 1201).

[fol. 791] Used and Unused Property

Transit House

R. L. Austin, a witness called by the Respondent, after being duly sworn, testified in substance as follows:

Direct examination:

I live in St. Joseph, Mo., and I am in the livestock commission business, being a member of the firm of Austin, Hamill & Hoover. I have been a member of this firm for 15 years and have been in the livestock commission business at South St. Joseph for 26 years. Prior to becoming a member of this firm I was with Prey Brothers & Cooper

for 11 years (T. 1230). I was doing practically the same type of work then that I am now doing. Counsel for Respondent explained to the witness that the Secretary of Agriculture is making an inquiry into the rates of the St. Joseph Stockyards Company, and one of the questions which has been inquired into has been the amount of property which should be included as used and useful property for stockyards purposes, and that there had been testimony in respect to whether the Transit House should be included as used and useful property. I have an opinion as to whether the Transit House is necessary at the St. Joseph Stockyards. They need a hotel down there to take care of the shippers and transient people that come to our market. It is the only place they can stay in St. Joseph, South St. Joseph, or tributary to the stockyards, that is a good place to stay. They have got all kinds of cheap rooming houses and so forth down there. I would feel that it is essential with shippers getting into the yards off of these stock trains most all times of the night, makes a place for them to go and stay, and during the past few months or years the [fols. 792-801] truck business has got to be quite an item down around the markets, and truck drivers arrive there all times of the night. It makes a place for them to go and stay and rest up (T. 1231). I would say the Transit House is absolutely run as a respectable hotel.

Cross-examination:

I would not expect to be able to rent a $100,000 hotel for $100 per month. If I found a hotel of that value renting for that amount it would look like something was wrong. The Transit House is not a hotel that can get big prices from the class of people that it deals with. I do not know the prices they usually get. A good respectable clean hotel is needed down there at the Stockyards (T. 1232). I would feel that they need a hotel as costly as the Transit House; they might not need as large a dining room, but I would think they would need fully all the sleeping rooms they have. I have not had experience in the hotel business. I am simply saying that in my opinion it is necessary for it to be a good respectable clean moderate priced hotel near the stockyards.

[fol. 802] Mr. Hermann C. Henrici, a witness formerly called by the Government and sworn, resumed his testimony in substance as follows:

Direct examination:

[fol. 803] Going Concern Value

Practicability of Operating Part of a Stockyards During Construction of Other Parts

I heard the testimony of the witness Howson relative to the impracticability of operating a part of a stockyards while other parts of the same stockyards were under construction, it being assumed that the stockyards under construction would be a reproduction of the St. Joseph Stockyards. Such operation is not only practical, but it is a common observation that stockyards are being remodeled and rebuilt and are having new additions without shutting down the stockyards. Going into more detail as to how, in a general way, the stockyards may be operated in part while being constructed, the fact is, that certain parts of the yard at the present time, during certain seasons of the year, are not (T. 1203) used. It is very evident, as noted in one of our exhibits, that grass has grown up in the pavement adjacent to a certain scale, so that it is quite evident that there would be no difficulty of building a certain portion of the yard without inconveniencing the operation of the yard in any extent whatsoever. For instance, the hog division is practically isolated from the cattle division, so far as the operation is concerned. The sheep division is practically isolated from the cattle division also. It is common knowledge that construction work can be carried on under much more difficult conditions, in a much more concentrated area, than exists in the stockyards, without inconveniencing the operation of the property. At the St. Paul market a double deck concrete hog building was constructed. In Kansas City some twenty-three or twenty-four acres of pens were destroyed by a fire several years ago, were entirely rebuilt; and in the ordinary process of the entire operation [fol. 804] of a stockyards there are many daily evidences of major items of construction which do not inconvenience the operation of the yard, nor add to the cost of construction of these particular items. Such operations would not prevent the completion of the new yard within the year

which I estimated for its construction. It would not make the cost unreasonably high (T. 1204). As to the effect on cost of constructing a yard in parts rather than conducting the operation over the entire plant simultaneously, if the construction of these yards covered a period similar to the establishment of the so-called reconstruction of the business, namely, the period of five years, the demand for labor would permit the use of non-union labor instead of the union labor as has been included in the reproduction new value of the property, and it would not necessitate the accumulation of so large a quantity of materials at one time, and no doubt would result in a reduced cost of construction. The use of non-union labor refers to a five-year period of construction. My judgment is that in an effort to construct it in one year union labor would probably have to be employed (T. 1205). Assuming for instance that the sheep division would be built and put into operation before the hog division was completed and that the period of construction of the entire yard was limited to one year, the construction of the yard during that year by parts would not increase the cost of the construction of the major divisions. Constructing the stockyards while operating in part would be much simpler than making an addition to an office building while operating. For example, the Bell Telephone Exchange in Kansas City in which is located two major automatic exchanges, has recently had seven stories added to it without the interruption of service and practically no inconvenience to the tenants, and practically no increase in costs, so far as we can determine in the cost of adding those [fol. 805] additional stories. Of course, there had to be some dismantling which had to be done, but I am talking now mainly as to the cost of construction of the new addition. Those materials, and that labor, all assembled, occupying a comparatively small area of ground, provision having to be made for the ingress and egress from the building, and in the full operation (T. 1206) of the building. As compared with the stockyards, where the area covers many acres, the problem of the stockyards construction and operation is very simple. The Bell Telephone Building to which I refer is located in the down-town section of Kansas City at 11th and Oak Streets. It is surrounded by busy streets with very little space for assembling materials and carrying on operations. The St. Joseph

Stockyards is just the reverse of that. The Bell Telephone Building was 15 stories high before the 7 stories were added and each story had to be piled on top of the one below it. In the stockyards the lay-out is horizontal rather than vertical. That makes it less difficult to operate a stockyards while constructing (T. 1208). In my opinion it would be practicable from an engineering standpoint to construct the sewers and water mains in various parts of the stockyards at different times, so that one division might be built and operating while sewers and water mains were being laid for another division.

Cross-examination:

[fol. 806] Operation of Stockyards During Construction

I never operated or built a stockyards or tried to operate one and build one at the same time. I did not state that I relied upon what has been done at St. Paul and Kansas City. I did not rely on that. My opinion has been based upon several years' observation of construction of stockyards; my experience in general construction in which I have had charge of the designing and supervision and the general knowledge as an engineer. I have observed construction work going on in every market where we have made an appraisal (T. 1210). One market was St. Paul. They were doing some construction work when we were there. Since then they have constructed a double deck hog house. That was in the nature of a substitution, replacing the old hog yard. The St. Joe Stockyards have expanded their sheep division and the hog division both since I have been coming here. The Denver yards have been substantially rebuilt in many places, major changes have been made. The Chicago yards, viaducts have been constructed, pens reconstructed, buildings built and practically the Exchange Building was completed while we were making our appraisal at the market. These things are illustrative of the type of construction which I have noticed (T. 1211). I said that if the stockyards were rebuilt in 5 years they could use non-union labor in a similar manner to which much of the construction has been done at the St. Joseph market. I am familiar generally with the labor situation in St. Joseph from my investigation. I have never hired any labor myself in St. Joseph.

My investigation showed that there was ample organized labor. I do not know what the condition is right at this moment. My investigation was made several months ago. [fol. 807] Of course it simply is a matter of announcing a large major construction program. The labor market is rather flexible. I think generally there is a turmoil in the ranks of organized labor at the present time but I do not know. At no time are they always free from turmoil. I do not know of any specific trouble they are having at this time (T. 1212). Several months ago, when we inquired, we were advised that there was an ample supply of labor. I wrote letters to various union leaders and Mr. Galbreath came to St. Joseph and interviewed those men. I cannot give you the names of the men. They were the secretaries of the unions, I think. The extent to which I personally handled the matter was writing the letters. I did not come down here but had Mr. Galbreath make that inquiry.

As to whether as a practical proposition in construction generally it is practical to wait until construction is finished before operations are started, I don't know as I would say that is the general practice. For instance, in the case of a commercial building in Kansas City, it would be in operation on the lower floors while the balance (T. 1213) of the building was being completed. I imagine there would be more instances where the property was completed before it was put into operation. So far as units are concerned the general trend is to operation after construction is entirely completed.

Redirect examination:

If I were employed to superintend the reconstruction of a stockyards similar to St. Joseph that had been destroyed, and were faced with the loss of the business of that stockyards until it could be put into operation, I would plan to operate it in part, as soon as I had certain units ready. I would make an effort to build certain portions of it in order that I could operate it before having to build the entire market, if I had business which would [fol. 808] warrant its construction (T. 1214). In reconstruction of business properties generally engineers would ordinarily make that effort. I recall the fire at the Kansas City Stockyards some years ago. Between 23 or 24 acres of their pen areas were destroyed, as I recall it.

I cannot state what percentage that was of the entire pen area. The destruction involved the cattle division. That stockyards did not cease receiving cattle while that division was being rebuilt.

Relative to the addition of seven stories to the Bell Telephone Building in Kansas City (T. 1215), I was consulting engineer for the architect.

Mr. Galbreath is one of the engineers working under my direction.

My firm of Henrici-Lowry Engineering Company does not have occasion to employ labor. We act only as consulting engineers, in connection with the designing and supervision of construction, and supervision of operation of various buildings and power plants, industrial plants and other developments. We do have occasion to observe the employment of labor and consider such employment in making our plans. In and about St. Joseph, Missouri, the union wage scale is much higher than non-union labor. That is the general condition everywhere I have operated (T. 1216).

Recross-examination:

I stated in my reconstruction program I would plan to operate a stockyards in units. I certainly would plan to operate the stockyards before the property as a whole was completed. I will explain that. In other words, if we had completed reconstruction of the Stockyards, the major portion of the sheep division, there would be no need to hold up the operation of the sheep division, until we completed the construction of the hog division. They [fol. 809] are situated quite a distance apart and the construction of the hog division would in no way interfere with the construction of the sheep division. In my estimate of a year's construction period I did not contemplate building one division at a time. I said that while there were several assumptions made previous to my answer, one of the assumptions was that if the business had been destroyed and were to be rebuilt, the business were to be rebuilt in some sort of fashion, my assumption was that I would not build the entire yards to take care of a small portion of the business. There would be no occasion to build the entire stockyards for a business which would be developed in five years hence, when you could, just as

well, occupy the time, in those five years, building the stockyards to correspond to the demands of the business (T. 1217). My original assumption was that the entire stockyards would be built uniformly throughout that year. In other words, we would construct the Exchange Building in one contract, the sewers would be installed in another contract, the pen areas would be constructed in another contract, and so on, so that the whole thing would be constructed as you go along; all going along at the same time. My assumption about operating some parts of the yards while other parts are under construction is based on the fact that there would be no interruption of the business. In other words, that the business would be just as it is now (T. 1218).

Reredirect examination:

If the owners of this property asked me to plan and sup-rintendent the reconstruction and they gave me the amount of business that had to be taken care of, 25% during the first year of operation, 80% regained in 5 years and 100% in 8 years, I would endeavor in my program of construction to build the structures sufficient to [fol. 810] take care of 25% of the business. I certainly would not go ahead and construct at one time sufficient stockyards to take care of 100% if we were only going to have 25% of it, and the balance of the yards would be constructed, anticipating reasonably the recovery of the business or the construction of the business, whichever way you want to put it. That is the construction on which I said I could use the non-union labor. The stockyards labor could be used in such construction, particularly of the pen areas and paving (T. 1219).

[fol. 811] Going Concern Value

J. O. Barkley, a witness, called by the Government, having heretofore been sworn, testified in substance as follows:

Direct examination:

I recall when we had to take care of an extraordinary number of receipts of livestock at St. Joseph right after

[fol. 812] the fire at Kansas City. The provision we made for taking care of these additional receipts was that we constructed some temporary pens, about 5 acres. We commandered the entire shipping division, or traders' division, for the handling of the commercial cattle. The temporary pens were constructed on the northwest part of the cattle division (T. 1223). A part of them was where the packers' holding pens now are, and a part where the present cattle scales are located. We smply used pens there and held them, and as we got rid of some of our cattle by sale, after they passed over the scale, we would work them back up as near the sales division as we could. A good many of them were put there from the docks. Those temporary pens were simply board construction with ordinary gates and alleys. It took us about a week to build those 5 acres of pens. We used them until the Kansas City Stock Yards could rebuild. I would say that was several months. I do not recall just exactly the time, but we had a great many cattle that ordinarily went to Kansas City for quite a period on account of that fire and their reconstruction (T. 1224). I think that our receipts during that time ran up to something like 15,000 a day, as I recall it, or about 50% over our capacity at that time. It has been a good while ago, and I have not had occasion to refresh myself on that particular thing. I know that we were congested to the last word in the handling of our cattle, and we took care of them the best we could.

Cross-examination:

I do not recall the exact year of that fire. I think it was 1916 or 1917. These temporary pens were not comparable to the permanent facilities which the stockyard company maintains for the handling of cattle (T. 1225). There was no paving, sewers, or water. They were simply [fols. 813 & 814] holding pens to be used temporarily until the rush was over. They were used in conjunction with our regular layout. As soon as our other pens were emptied we would move the stock into them.

[fol. 815] Surrebuttal Testimony of Respondent

S. F. KOSTERS was recalled for further examination by respondent and testified in substance as follows:

Direct examination:

Used and Useful Property

Sheep Feed Lots

I have been asked to determine certain facts with refference to the yearbook, which is Respondent's Exhibit 9 (T. 1249).

Referring to Respondent's Exhibit No. 9, page 14, the total yearly receipts, I am now prepared to say that these receipts include all receipts to the yards, whether they be direct shipments or otherwise.

Referring to page 15, Total Yearly Shipments, are only those shipments which leave the yards by rail, no drive or truck shipments being included.

Referring to page 16, the item "Driven out of yards to country" includes the livestock driven out whether it be driven to the country or to feed lots, or where not.

In addition to that information I was asked to ascertain whether or not the packers ever bought directly from the feed lot sheep which would not be recorded as being driven out of the stockyards. I am informed that this case never happens, that all livestock bought by the packers in the feed lots at the yards are handled through the yards. And further, I was asked to determine what per cent of the feed lot receipts are received by direct shipment. So far it has been impossible to determine this. It would entail a great deal of detail work, as the only source of information would be to take the daily bulletins for the year and go (T. 1250) clear back through each [fol. 816] bulletin. If it is still desired it could be furnished, but not on any short notice.

I think the discrepancy between the figures given by Mr. Barkley and those shown in the yearbook as to livestock which went to the feed lots is apparent. The figure which appears under the item "Driven out of yards to the country," under the column of sheep, for the total of

1928, which is 198,460, is practically all covered by those that go to the feed lots. Mr. Barkley testified that there were on feed during the year 1928 in those same feed lots some 247,000, I believe, which makes a difference in round numbers of 50,000 sheep. I think it is apparent that this difference is accounted for in the fact that the feeders had on hand at the beginning of that particular period that 50,000 sheep, or thereabouts, and might be accounted for somewhat, in round numbers, I think that checks closely, would be an apparent check, I don't know the actual figures and am not qualified to say exactly where the discrepancy occurs, but that seems reasonable.

Going Concern Value

Operation During Construction

I heard the testimony of Mr. Howson and Mr. Henrici on the question of construction of the St. Joseph Stock Yards Company under a reproduction new basis, with and without operation going on at the same time (T. 1251). I have an opinion on that question.

It is my opinion that, first of all, the construction period of one year for the reconstruction of a property of that size has been drawn down to a point where you are limited in your construction operations, in your construction program rather, to a very intensified period of construction. It would be impossible, in my mind, to shorten that period at all, and further, the period would be so crammed full [fol. 817] of construction that it would be impossible to carry on any operations to any extent which would be appreciable. A great many things underlying that idea—if I might explain from the beginning, when I first gave consideration to the subject of a construction period I analyzed it from the standpoint of operations during construction, and I am frank to say that my first ideas were along the lines of a two-year period rather than a one-year period. I then obtained information from the Government, that they were contending a one-year construction period in their reconstructive analysis, and I gav- it further consideration. I went into every phase of it I thought was possible (T. 1252), outlined tentatively a construction program, outlined the matter of how the work would be carried on, assumed the number of con-

tracts which would be let, talked to the contractors who would naturally in the course of events be the bidders, and probably some of them the successful bidders on such contracts, and got their ideas of what they would be able to do under such tentative contracts, and knowing in general the possibilities in connection with stockyards construction, I finally have concluded that with very intensive operations, or rather intensive construction operations, that it would be possible, without any excessive cost which would be noticeable, to complete the construction of the property in one year's time. That was based on the assumption that all parts or units of the construction would be carried on practically simultaneously from the first date of the construction to the last date. In other words, I mean by that that no unit would be finished ahead of another unit, that they must all work hand in hand, arriving at the ultimate point of completion on approximately the same date.

I heard what Mr. Henrici had to say with respect to the use of the so-called stockyards labor instead of union [fol. 818] scale labor (T. 1253). If we consider a 5-year construction period, it would be physically possible to use so-called yard labor, but it would not be practical business. I don't believe that contracts of that size, or work of that size, would be tolerated to be done in a highly organized community by so-called "scab labor." The present labor situation in respect to organized labor at St. Joseph is as follows:

During the last three or four or five years, I don't remember just when the original movement was agitated, the labor situation in St. Joseph has been more or less in a turmoil there, due to the efforts of organized labor. A few years ago there were very few building trades well organized in St. Joseph. If my memory serves me right, there were only three that were considered fully established. At the present time the Labor Trades Council has organized to such a point that it is practically impossible to carry on operations unless done under the supervision of the Labor Trades Council. There are instances where non-union labor is employed, but that does not mean that that is comparable with the non-union labor which we employ in the yards, because that particular non-union labor which is employed on construction is paid the same

hourly wages as the labor organizations demand for their own members (T. 1254).

I have full knowledge of the facts as to whether yard labor has been used for new construction during the period in which I have been connected with the yards, some 11 years. To my intimate knowledge there has been practically no construction, or so-called construction work, carried on by the so-called yard labor. In fact it is our policy in all work which amounts to any sum of significance to contract the work. When the work is contracted, it is either done by union men or men who are obtaining union wages. I would say that on a whole, the work done by [fol. 819] so-called yard labor would be less than 1%. It would be negligible. I do not include in that, however, the expenditures in the item of maintenance. We necessarily have to keep a maintenance crew in existence at all times, and there is a considerable expenditure for maintenance, but it is not comparable to an expansion, or construction, program at all (T. 1255).

Cross-examination:

I could not say now what we would do in the future with respect to building new pens in the old southern cattle dead line, by union or nonunion labor. I was giving my experience in the past. My memory is not positive as to whether the Armour holding pens in the hog yards were built by union labor or not. I think the general work in the new construction of the truck cattle division was to let to contract. That was a result of the new construction, but if my memory serves me right, I believe in order to facilitate matters while the other pens were being torn down, and possibly obtaining some salvage from the existing pens, our own force was used in hauling that salvage and erecting it in that little block of pens which has been mentioned. If we have a certain carload pen in the cattle division and decide to divide it into two half-carload pens, that is merely a daily routine of operation (T. 1256). I would not consider that extension work because that fence line may exist there for a month, and then the pen may be thrown back into a carload pen, or it may be divided some more, depending upon what the future requirements might be. It is evident that it would be impossible to let a contract for $35 or $50. I do not know that the policy

of the stockyard company has ever been definitely established as to what work it contracts and what it does by its own labor. It has been the practice that practically all of our work, for which a request and estimate is re- [fol. 820] quired, that is, any expenditure over $500, has been let to contract. If the yard company desired to add 10 pens, for instance, to the sheep division, physically they could build them with yard labor, and there is no legal prevention (T. 1257). I did not say that we could not use our own labor to build extensions. I said that in a job comparable to the size of the one under consideration, it would not be practical to use it. I mean a job of the magnitude of rebuilding the entire stockyard in five years, or any period (T. 1258).

The records of our completed construction programs, or rather our request and estimate programs, are kept in my office. The accounting system, after the completion of one of these jobs, accounts for the expenditure—that is, to where the charge has been allocated, and those records are kept in my office. I designate to which account this work shall be charged, and on any items that are subject to my decision, I charge it either to new construction, replacement, or maintenance. Of those items, the general maintenance items do not come under my supervision. They are charged on a going work order project, which is a maintenance work order at all times, and do not come under my supervision. The master mechanic, or the carpenter foreman, charges the general items of maintenance which occur from day to day, directly to a work order project, which is the maintenance account. What comes under my supervision would be items of material significance. A five-dollar repair bill does not come to me, but if we are doing a job under a request and estimate, for example, which amounts to $500 or more (T. 1259), the distribution would come to me for accounting purposes. A small item of replacement, like putting in a new post, would be handled as repairs to yard structures.

Whereupon the witness was excused (T. 1260).

Thereupon the hearing was adjourned sine die.

The foregoing, together with exhibits included therein, either physically or by reference, is a fair and satisfactory abstract of the evidence introduced at the above entitled hearing. It is understood that in all cases where an objection was made and overruled that an exception was preserved whether the exception is shown in this abstract or not.

Elton L. Marshall, Solicitor, United States Department of Agriculture; J. S. Bohannan, Assistant to the Solicitor, Attorneys for the Government. Ross Dean Rynder, William N. Strack, Attorneys for Respondent.

[fols. 822-840] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY.

Docket No. 298

In re SECRETARY OF AGRICULTURE

vs.

ST. JOSEPH STOCK YARDS COMPANY, Respondent

Abstract of Record

Rehearing Held at St. Joseph, Mo., January 10 to February 16, 1933

[fol. 841] The following is a copy of the order reopening the above entitled proceeding and setting it down for further hearing.

(Caption Omitted)

ORDER REOPENING PROCEEDING, ETC.

This docket was instituted by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on October 9, 1929, a copy of which was duly served upon respondent. Pursuant thereto a hearing was held beginning on December 2, and ending on December 17, 1929. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary on May 13th and 14th, 1930, and respondent submitted a brief.

On February 11, 1931, respondent filed a petition in this proceeding alleging certain general economic changes and, [fol. 842] in detail, the particular effect of such changes upon respondent's business. The petition prayed that an order be entered reopening the proceeding and setting it down for further hearing on the matters stated in the petition.

On July 20, 1931, the Secretary of Agriculture issued an order denying respondent's petition for rehearing; prescribing a schedule of maximum rates and charges and ordering that respondent make no charge for any stockyard service, rendered by it, in excess of the charge prescribed therefor in said schedule.

Thereupon, respondent filed in the District Court for the Western District of Missouri a bill alleging, among other things, that the order of the Acting Secretary, aforesaid, in denying respondent a rehearing and in prescribing a schedule of maximum rates based on the record made at the hearing in December, 1929, and without consideration of the changes alleged in respondent's petition to have occurred since the hearing, denied to respondent a full hearing and, therefore, constituted a taking of respondent's property without due process of law. The bill prayed injunctions both temporary and permanent against the enforcement of the aforesaid order of the Acting Secretary.

A temporary injunction was issued in accordance with the prayer of the bill and, after a hearing at which the Court received evidence in support of the allegations respecting changed economic conditions, the injunction was made permanent, it being the opinion of the Court that the Acting Secretary erred in denying the prayer of respondent's petition for a rehearing. The Court based its opinion in this regard upon the decision of the Supreme Court of the United States in the case of Atchison, Topeka and Santa Fe Railway Company v. United States, 284 U. S. 248, decided January 4, 1932.

[fol. 843] In view of the above mentioned decisions, the Secretary of Agriculture is of opinion that it is his duty, under the law, to reopen this docket and hold a rehearing to the end that all parties may be given opportunity to present such evidence of changes, both general and particular, which have occurred since the year 1929 as may be material to the issues raised by the order of inquiry herein;

and also the end that all parties may have opportunity to present such other evidence as may be material to said issues; and further to the end that a general inquiry may be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all tariffs or schedules of rates and charges filed by respondent and now in effect for stockyard services rendered by it at the St. Joseph Stockyards, South St. Joseph, Missouri, wherefore,

It is ordered that the aforesaid order of the Acting Secretary of Agriculture entered in this docket on July 20, 1931, be and the same hereby is vacated and set aside; and that this docket be and the same hereby is reopened.

It is further ordered that a supplemental hearing herein be held before an examiner designated by the Secretary of Agriculture, in the Federal Building at St. Joseph, Mo., beginning on the 28th day of November, 1932, at 10:00 A. M., or as soon thereafter as the parties may be heard and continuing until such hearing is completed, which said hearing shall be also a general inquiry into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent at the St. Joseph Stockyards, South St. Joseph, Missouri; that at such hearing all parties shall have the right to [fol. 844] introduce further evidence competent and material to the issues raised by the aforesaid order of inquiry herein and shall also have the right to introduce evidence competent and material to the issue of the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent as aforesaid; and that the record heretofore made in this docket, together with all the evidence introduced at said hearing, shall constitute the record before the Secretary of Agriculture in this proceeding.

In witness whereof, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the

Department of Agriculture to be affixed hereto in the City of Washington, this 19th day of July, 1932.

Arthur M. Hyde, Secretary of Agriculture.

[Official Seal.]

[fol. 845]

Abstract of Evidence

Evidence Offered by Government

Pursuant to the above order for rehearing a hearing therein specified began in St. Joseph, Missouri, on January 10, 1933, before an Examiner of the Department of Agriculture. The Government and the respondent were present by counsel.

Respondent's Tariffs

The Government introduced in evidence, without objection, as Government Exhibit No. 101, Respondent's Tariff No. 5 which became effective October 10, 1929, and Supplements 1 to 10, inclusive. Respondent's Tariff No. 5 and Supplement No. 10 thereto contain rates which are now in effect at the St. Joseph Stock Yards, the reasonableness of which is the subject of the inquiry. The rates and charges as set out in Tariff No. 5 and Supplement No. 10 thereto are as follows:

Government Exhibit No. 101

Subject:	Item No.	Application and Charges
Yardage Including the Privilege of the Market	1	Cattle.....35c per head Calves, 400 pounds or under (Note 1)....25c per head Hogs (Note 1).....12c per head Sheep and Goats.....8c per head Horses and Mules.....35c per head For the use of special facilities a charge, in addition to the regular yardage charge, will be assessed against all live stock received at these yards in vehicles, such as automobiles, trucks and wagons. Horses and Mules.....5c per head Cattle.....5c per head Calves.....2c per head Hogs.....2c per head Sheep and Goats.....2c per head The above applies on all animals received at this market, including direct consignments for packers or others, and through shipments ordered weighed. Live stock forwarded or driven to country from yard, without change of ownership or being weighed, yardage will be waived. Live stock resold in commission division, one-half the above rates additional will be collected. Note 1: Maximum yardage charge per car: Calves, $20.00; Hogs, $15.00.

[fol. 846]

GOVERNMENT EXHIBIT No. 101—Continued

Subject:	Item No.	Application and Charges
Feed and Bedding	2	Prairie Hay (Note 1.).....$1.10 per cwt. Alfalfa Hay (Note 1).....$1.50 per cwt. Bedding (Straw or Hay)..... .60 per bale R Corn..... .75 per bu. meas. Oats..... .90 per bu. meas. Note No. 1—Hay in ton lots fed by purchaser $2.00 per ton less. Note No. 2—When live stock is fed and watered in car, charge of $1.00 per deck will be made in addition to regular charge for feed. Note No. 3—When other feed than the above mentioned is requested, it will be furnished if obtainable, by special arrangement. R Indicates Reduction.
Dipping or Spraying	3	All dipping or spraying of live stock is subject to supervision and regulation of the Bureau of Animal Industry of the United States Department of Agriculture, or the Missouri State Board of Agriculture. This Company is not responsible for loss or damage to live stock occasioned by, or resulting from dipping or spraying. The Stock Yards Company furnishes the facilities, the dip and the labor. Charges as follows: Cattle.....35c per head, minimum $35.00 (See Note No. 1) Calves.....15c per head, minimum $35.00 (See Note No. 1) Hogs..... 5c per head. R Sheep or Goats..... 5c per head, minimum $ .8.00 (See Note No. 2) Note No. 1: Minimum charge will not apply to each owner when two or more dip 100 head or more of cattle at one time, or 234 head or more of calves at one time. Note No. 2: Minimum charge will not apply when two or more owners dip 160 head or more at one time. R Indicates Reduction.
[fol. 847]		
Hog Immunization Plant	4	Use of facilities for Vaccinating Hogs....10c per head Note: This Company accepts no responsibility for damage or loss of animals in process of vaccination. Owners will make their own arrangements with Deputy State Veterinarian for serum and veterinarian service.
Cattle Testing Barn	5	Cattle tested for Tuberculosis and other diseases: Use of specially equipped barns, including feed, bedding and water.....$1.00 per head This Company will not be responsible for damage to, or loss of stock moving to or from testing barn, or in process of testing, or in placing animals in stanchions.
	6	Whenever it is necessary to clean and disinfect any portion of this Company's pens by reason of the movement in or through the yard of live stock infected with contagious disease, the owner of such infected live stock will be required to pay for disinfecting as follows:

GOVERNMENT EXHIBIT No. 101—Continued

Subject:	Item No.	Application and Charges
Cleaning and Disinfecting		Single Pens.....$2.50 Double Pens..... 4.00 Chutes..... 2.50 Alleys—(Same ratio as pens).....37c per 100 sq. ft. Cleaning and disinfecting wagons and small trucks.....75c each Cleaning and disinfecting trucks (2 tons and over).....$1.00 each
Miscellaneous	7	Partitions and troughs for cars, papering or slatting cars, or other special service will be provided under special arrangements. Note: Owners of live stock may furnish their own material and labor for the above and no charge will be made.
Bedded and Shelter Pens	8	Sec. A.—Bedded pens for hogs, $1.00 per carload pen per night. Bedded pens for hogs 50c per half carload pen per night. (Note 1 and 2) Sec. B.—Bedded pens for hogs, Truck division, 15c per pen per night. (Note 1 and 2) Sec. C.—Shelter pens for cattle, 10c per head, calves 5c per head, each 24 hours; $2.00 minimum each pen. (Note 1) Note No. 1—No hogs will be put in bedded pens, or cattle in shelter pens, unless so ordered by owners or their agents. Note No. 2—These charges apply only on hog pens permanently bedded during winter season. When such pens are in use, other pens will be bedded at the discretion of the Stock Yards Company and regular prices for bedding will be charged in accordance with Item 2H. Reissue—Effective January 12, 1931.
Special Sale Barn	9	Cattle..... 35c per head yardage A Cattle (Note 1).....$1.00 per head stall Cattle.....$1.00 per head ring fee Hogs..... 12c per head yardage Hogs..... 50c per head ring fee Hogs..... 35c per pen per day Feed furnished at regular rates. All stock while in the Pavilion or Barn will be at risk and care of owner. Note: Limited to four days; 50c per head per day for each additional day. A Indicates Advance.
Special Services	10	R Special services in the handling of live stock, requested by the owner, not otherwise provided for, will be charged for under special agreement. R On special request at the general office of the St. Joseph Stock Yards Company, written permission (which must be secured in advance) will be given to weigh shipments of live stock on through billing passing through this market (not offered for sale) and which the owner or agent desires to have weighed in carload lots. A charge of $2.00 per car will be

[fol. 848]

GOVERNMENT EXHIBIT No. 101—Continued

Subject:	Item No.	Application and Charges
		made for the service, the owner or agent to deliver the stock to the scales and take it from the scales. Provided no sale is made and weights so secured are in no way used in connection with the sale of stock. R Reduction.
Feed Lots and Sheds	12	This Company will furnish, upon reasonable request, feed lots and suitable sheds for the holding and fattening of live stock (apart from its regular facilities provided for the yarding and feeding of live stock for immediate sale), the feeding and care to be the sole responsibility of the owner of such live stock. For such facilities the following charges will be made: Sheep Feeding..... 5c per head Hog Feeding..... 5c per head Cattle Feeding, where land only is furnished.....15c per head and where sheds and other inclosures are furnished.....35c per head This charge is in addition to any charges for yardage and feeding of live stock offered for sale at this company's stock yards. Reissue—Effective March 24, 1931.

[fols. 849–851]

No.	Rules
1	No person, firm or corporation shall be permitted to solicit business in any of the roads, driveways or docks of this Company, where live stock is being handled, since solicitation of business at such places tends to interfere with the proper and orderly conduct of the business of this Company. Any person, firm or corporation violating any of the provisions of this Rule will be denied the privileges of the Yards, treated as a trespasser, and dealt with accordingly.
2	Any owners or shippers of live stock to these yards, who desire to handle and sell their own stock without the assistance of commission men or dealers, will be provided with suitable pens and given service equal to that furnished for stock handled through any other agency, and at the same rates for feed and service. This company may require payment of all yardage, freight, feed and other charges in advance of delivery of any live stock handled in this manner.
3	Any firm, corporation or individual by themselves or their employees, detected using unfair, dishonest or fraudulent practices will be denied the privileges of these stock yards, treated as a trespasser and dealt with accordingly.
4	All traders handling cattle (buying and selling) in these yards will be assigned pen or pens, in which the traders must handle their cattle. Traders moving cattle from assigned pens to sale division (for consigned resale only excepted) will have pen assignment cancelled and they will be denied the privilege of the yards.

[fol. 852] Used and Useful Property

MR. CHRISTENSEN, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

I am the same person who testified at the prior hearing in respect to the facilities of respondent in the service which it rendered and the used and useful property which it has. [fol. 853] Since then I have gone over that testimony, having read it over within the last day or so, and I am familiar with it (T. 59).

Since that hearing and prior to the opening of this hearing I have made a careful study and survey of conditions as they now exist at the St. Joseph Stock Yards. I have gone into and carefully examined all of the things concerning which I made a report at the previous hearing, with the idea of noting any change in the conditions at the yards or any other factors affecting the services and facilities of respondent.

In the prior hearing my report consisted of Government Exhibit Nos. 5-A, 5-B, 5-C, and 5-D. That hearing was held in the latter part of 1929 (T. 60). Since that time and continuously up to this time I have been engaged in the analysis, inspection and classification of stockyard facilities and services. I have worked and made studies similar to the one I previously made at St. Joseph Stock Yards, at Denver, Kansas City, National Stockyards, Illinois, Sioux City, Iowa, and Omaha, and made a partial report of the facilities and services at the Wichita Union Stockyards. I have appeared and testified at all these places except Sioux City and Wichita.

The nature of these studies in a general way is very similar to the studies I previously made and testified to at St. Joseph. Since testifying previously I have visited the St. Joseph Stock Yards and again made an inspection and inquiry as to the current method of conducting services and the uses of the facilities (T. 61).

I was in St. Joseph for the purpose of making a study of respondent's yards from August 1 to 15, 1927, and from August 20 to September 9, 1927. I was in St. Joseph on July 16, 1929, and from August 21 to 28, inclusive, 1929, and from November 25 to December 18, inclusive, 1929.

[fols. 854-865] I was in St. Joseph July 28 to August 12, 1932, October 11 to 12, 1932 (about a day and a half), and on October 17, 1932. I arrived in St. Joseph January 7, 1933, and have again visited the stockyards several times in the meantime.

In gathering the information and data, I followed approximately the same general procedure which I used in my original report. The last survey was made quite largely in connection with Mr. Black, Superintendent of the stockyards, not only in going over the property, but in conferring with him as to any changes which have been made, all of which records were verified by a personal inspection. I had no one assisting me in this work except in pointing out different areas for the purpose (T. 62) of computing the areas, Mr. Schramm assisting me in locating some of the operating units, etc.

[fol. 866] Feedlots

Item No. 6 of Government Exhibit No. 107-A is that portion of the O'Connell Feedlot located in Tract A. It is used in connection with other areas by the O'Connell Feeding Company for feeding and fattening its own livestock. That area is allotted to the O'Connell Feeding Company for feeding livestock. It is apart from the property operated by the Stock Yards Company as a public market (T. 81). Mr. O'Connell will keep his own livestock and under item 12-A of the Stock Yards Company's tariff he may also feed livestock for other persons with whom he makes con-
[fol. 867] tracts to feed and fatten livestock. That tract of land was formerly included in land leased to the O'Connell Feeding Company but the lease has been allowed to expire and for the use of the land he is now charged on a per head basis. The per head basis takes the place of the rental basis. The compensation now received by the Stock Yards Company for the use of that property is arrived at on a per head basis instead of a monthly rental basis. The charge for that is provided for in Item 12-A of respondent's tariff. As I understand it, the O'Connell Feeding Company, or other feeding companies operating under similar circumstances collect this rental from other persons for whom they may feed livestock, and either turn it over to the Stock Yards Company or absorb it. Under certain circumstances

it is the practice of some of these feeding companies to absorb the per head charge of the stockyards referred to in Item 12 of the Stock Yards Company's tariff (T. 82). I do not know whether O'Connell feeds only his own livestock or livestock of others. I did not make any inquiry as to that. In a general way, by inquiry and gathering information in regard to the operation of feedlots under Item 12-A of the tariff, I was informed that the persons to whom the lots are assigned have the privilege of feeding for other owners. Frequently livestock comes to market and it is not fat and ready for slaughter. These feeding companies, especially in the case of lambs, will probably buy the lambs or they may feed them for the original owners until they are ready for the market. They are removed from the stockyards to these feedlots, which are separate and apart from the stockyards where livestock is held for sale and fed on a contract basis. The rate charged by the operators of these feedlots is the cost of feeding plus $5.00 per ton or some agreed basis along that line. When the livestock is finally ready for market it will be brought back to the [fols. 868-880] stockyards, that is, back to that section of the property in which livestock is held for sale, and there the sale will be consummated and the livestock weighed and sold (T. 83). This process of feeding or fattening is comparable to the ordinary feeding and fattening of livestock in outside feedlots the country over (T. 84). I do not consider that such an operation is necessary in the regular marketing of the livestock. Livestock is not held for sale in these feedlots. It is removed from the market and it is a different function entirely. It is a feeding function under the operating control of persons to whom these facilities are allotted or who are given permission to operate in these feedlots. I do not consider it is necessary for the Stock Yards Company in its capacity of operating a market place to have facilities such as these. I think they could market any livestock which came to the stockyards for immediate sale without the use of these outside feedlots. I think both the land and structures are not used and useful in connection with the rendition of stockyards services for the reason that they are not used as a market for livestock. They are removed from the property operated by the stockyards for holding livestock for sale and it is an independent oper-

ation outside of the stockyards, just the same as some farm (T. 85) feeding operation in the vicinity of the stockyards would be operated (T. 86).

[fol. 881] Item No. 23 is the space lying between the so-called Nichols feedlot and the so-called Davis feedlots in the north portion of what was formerly a part of the Southern cattle division. It is just a dead space which is not being used for any purpose. The south end and east end are closed and there would be no way to go through from the stockyards to the old Southern cattle dock on the north. The portion running east and west, north of the Nichols (T. 121) feed shed, is closed at both ends and is simply a dead space used for no purpose. The north and south portion is also unused and overgrown with tall weeds. It is not used and useful in connection with the rendition of stockyard services for which rates are charged by respondent.

Item No. 24 covers the feedlots described in my previous report which were leased to various persons and firms engaged in the feeding of their own livestock and possibly livestock which they contract to feed for others. They are located in tract "C" in what was formerly known as the Southern cattle division. This area was discontinued as a part of the stockyards in which livestock is held for sale [fol. 882] soon after the shipment of Southern cattle was prohibited by law. This area was then rearranged and leased to independent livestock feeders (T. 122). These feedlots are located north of the hay barns, west of the sheep division and the company's stable, and south of the old Southern cattle dock and railroad right-of-way of the Belt Railway, and east of Packers Avenue and part of the material yards. They are entirely outside of the section of the yards now used for holding livestock for immediate sale. These feedlots are operated by several persons. The leases which formerly covered these feedlots have expired and in lieu thereof respondent has inserted in its schedule of rates and charges a per head basis for determining its compensation for the use of these feedlots. Those charges are paid by the firms and persons to whom the feedlots are allocated. Sheep and cattle are principally handled; in these particular feedlots, there are both sheep and cattle. Mr. Nichols and Mr. Davis feed cattle principally (T. 123) while Swift and Company and Rountree feed lambs prin-

cipally. The people who operate these feedlots usually buy the lambs at the stockyards and remove them to these feedlots where they are fed and held until they are fattened and in condition for sale to the packers as fat animals. They are then brought back into the stockyards, weighed, sold and delivered in the yards maintained as a public market. The situation in these feedlots is identical to the situation where a farmer bought a carload of sheep and took them out to a feedlot in the country some two or three miles away for the purpose of fattening and returning them to the market. Livestock removed from the stockyards to these feedlots adjacent to a stockyards are accounted the same as livestock driven to the country. For all practical purposes they are removed from the market and the situation would be the same as if they were taken out to the [fols. 883-885] farm and fed (T. 124). In my opinion these feedlots are not essential to the operation of respondent's stockyards in connection with its function as a market place. The market facilities of the stockyards function twice in connection with feedlots, once before these animals are taken to the feedlots, and again when they are returned. The Stock Yards Company has no jurisdiction over the livestock while they are out of the yards, and in the ossession of the feeders. These feedlots are not used and useful in connection with the rendition of stockyard services. They are used in connection with the private feeding business of the people who operate them, who do not buy their feed from the stockyards, but operate these yards for their own compensation and profit. I do not understand that the Stock Yards Company sells the feed used by these operators in the same way that they sell feed to parties who consign livestock for sale at the market. I understand that these feeders can buy their feed and do buy it from any source which they see fit, and they sell the feed again to any person with whom they may contract to feed livestock on a cost basis plus a certain amount (T. 125), say $5.00 per ton for the feed fed, and in some instances they also absorb the so-called yardage charge which must be paid to the Stock Yards Company. The people who have the assignment of these pens contract with other people to feed livestock. By that I mean the operators of these feedlots to whom have been allocated certain feedlots by respondent (T. 126).

[fol. 886] Item No. 33 is a parcel of land lying south of Armour and Company's plant indicated on the map as Hammond Packing Company and north of the Terminal Railway right-of-way. It lies principally west of Packers Avenue and east of the Terminal Railway property. It is used as a feedlot and is part of the property occupied and used by the O'Connell Feeding Company for feeding livestock. Its use was described when I was describing the operations of the O'Connell Feeding Company. In my opinion it is not used and useful for stockyard services because it is operated by an independent feeding company in connection with its own business, separated and removed from the stockyards in which livestock is held for sale. It is not operated as a public market where livestock is bought and sold (T. 135). It is my understanding that respondent is compensated on a per head basis as outlined in Item 12-A [fol. 887] of the schedule of rates and charges and formerly this was provided for on a rental basis. The same situation exists that exists in respect to other feedlots (T. 136).

[fol. 888] Item No. 42 includes various items listed. The land is occupied by buildings and equipment leased to Henry Rockhold and operated by him principally as feedlots. A copy of the lease is inserted in my report on pages 162, 163, and 164 of Government Exhibit No. 108 (T. 144). The property on which the buildings are located is north and west of the Belt Railway property and east and south of the land described as Item No. 41. Under the lease, Henry Rockhold has the exclusive use of the equipment and of cer- [fols. 889 & 890] tain buildings located on this land. These leased properties, equipment, and facilities, and certain buildings are enumerated in the list attached to and made a part of the lease. These items are set out and described in Government Exhibit No. 107-A. Mr. Rockhold is carrying on a feeding business, feeding lambs and shearing them (T. 145). The land and facilities covered by Item No. 42 are not used and useful in connection with the rendition of stockyard services for which rates are charged by respondent because the operation of a feedlot outside of the stockyards and controlled by lessees is not in my opinion a stockyard service (T. 146).

[fol. 891] Item No. 48 consists of feedlots located in Tract No. 14. They are within the city limits located east of and separated from the stockyards by the railroad tracks and

the rights-of-way of several railroads. They are immediately south of Illinois Avenue. The entrance adjoins Illinois Avenue, but there are other parcels of land intervening between the feedlots and Illinois Avenue. They are immediately west of Lake Avenue (T. 150). These feedlots consist principally of what was formerly the horse and mule division of the stockyards. Since that division has been abandoned in that location, all of the barns and improvements formerly constituting the horse and mule market have been converted into so-called feedlots and are operated by Stevens and Williams, an independent feeding company, feeding principally sheep but handling some cattle. The operation of this feedlot is similar to the operations which I have described with respect to other feedlots previously in my testimony. Respondent obtains compensation in the same way as I have previously described under Item 12-A of the tariff (T. 151). There was a fire over there and some of the property was destroyed and rebuilt. It was formerly a shed and a brick horse barn, and I find that it was rebuilt with a steel and brick structure. That is the building now occupied by Stevens and Williams partly as an office and for feeding livestock. Under this item I have included the entrance which is on Lot 6, which connects the Stevens and [fol. 892] Williams feedlots, or the section formerly known as the horse and mule division, with Illinois Avenue. The tract of land covered by Item No. 48 and the improvements thereon are not used and useful in connection with the rendition of stockyard services for which rates are charged by respondent, for the reason that they are operated by independent operators in connection with their own business for their own compensation and profit, and they are not operated by the Stock Yards Company as a stockyards consisting of pens and other inclosures and their appurtenances in which livestock is held for shipment (T. 152).

Transit House

Item No. 50 represents the hotel known as the Transit House. It is located on the south side of Illinois Avenue and immediately east of the entrance to Stevens and Williams feedlots. It is located east of the entrance to the stockyards at Illinois Avenue, the railroad tracks intervening. It is on the main street in the city of South St. Joseph [fols. 893 & 894] known as Illinois Avenue (T. 153). It is

about 500 feet from the Transit House to the eastern boundary of the main stockyard area. It is a four-story brick structure which is leased to an independent operator and conducted as a regular commercial hotel. I do not know that I ever stopped there, but I have patronized the dining room. The patronage consists principally of livestock truckers who are in the commercial trucking business bringing livestock to the St. Joseph Stock Yards for the owners. I do not think it is used and useful in connection with the rendition of stockyard services for which rates are charged by respondent for the reason that the property is leased out and independently operated (T. 154). It is not a stockyard and is not used exclusively for employees or patrons of the yards in connection with their compensation or stockyard services rendered to them. Anyone who patronizes this hotel pays the operator or lessee the regular rates for the services rendered by the hotel proprietor (T. 155).

[fol. 895] The witness then identified the annual reports of respondent for the years 1930, 1931, and 1932, which were marked for identification as Government Exhibit Nos. 109, 110, and 111 (T. 161) and later received in evidence.

From the study I have made of the receipts of livestock as reflected from the books of respondent over a period of years, from my association and observation of the operations of the Stock Yards Company during the time I have had occasion to be at the stockyards and make observation and carry on my work, and from my general knowledge of the conditions affecting the stockyards industry, it is my opinion that the trend is definitely downward in the volume of receipts and, inasmuch as the facilities now in use for stockyard services appear to be ample, it is my opinion that there is no need for additional expansion land (T. 162).

[fol. 896] Cross-examination:

Trend of Receipts

On pages 11 to 25, inclusive, of Government Exhibit No. 108 I show certain statistics regarding the receipts of livestock at the St. Joseph Stock Yards. The important factor [fol. 897] is a five-year moving average. It shows the trend of most species of livestock downward. Such a study does not appear in my previous exhibit (T. 167), because it did not occur to me that that would be necessary on my part. During that time and previous to the hearing another rep-

resentative of the Department was compiling statistics (T. 168). I do not think the trend is an absolute governing factor as to whether the receipts will be larger or smaller in 1933 than in 1932. As the report indicates, there have been fluctuations from year to year. Next year might be lower or higher. That, of course, no man can prophesy except by using the past as a guide as to what may occur in the future, connected with general conditions. I do not think the information contained on pages 11 to 25, inclusive, indicates what will happen in the year 1933. It indicates that, judging by the past and other information which I would use in reaching conclusions, receipts are not going to increase materially. There may be a little increase from year to year or from month to month, but I do not see anything in the situation to lead me to believe there will be any appreciable increase (T. 169). My charts and many of my figures end with the year 1931.

Referring to Government Exhibit No. 111, the total receipts of all species in 1932 was 447,713 head less than for 1931, the only increase being in calves where the increase was 1,374 head. The decreases in other species were cattle 72,270, hogs 95,721, and sheep 281,096 (T. 170). The percentages on pages 27, 28, 29, and the top half of 30 of Government Exhibit No. 108 include the drive-ins from the feedlots. If they were excluded from the truck-in receipts the percentages would be changed somewhat. The data on page 30 indicates the number of sheep driven in from the feedlots and, if they are deducted, it would reduce the percentage of drive-ins. It is merely a matter of computation. I think [fol. 898] that the comparison of rail and truck receipts has a bearing on what may be expected in the future. The trend of receipts by rail and truck indicates the trend in the method of transporting livestock to market (T. 171). It indicates a decided upward trend in the truck business and a decided downward trend in the rail receipts. At St. Joseph and practically all other markets there has been a decided increase in the amount of truck receipts in the past few years. Judging from what has occurred in the past and the increasing advantages, such as good roads favoring truck shipments, and the fact that more people are inclined to use the highways in preference to the railroads in shipping livestock to market, it would be my best judgment that the trend will continue (T. 172).

Traders and Speculators

A "plant" is livestock which may have been sold once and the purchaser may desire to sell it again, and he may bring it to a commission company and the commission company will resell it for him. I imagine that "plants" are included in page 38 of Government Exhibit No. 108 in column 4, but I cannot say as to that (T. 172). The same thing would apply to pages 39, 40, 41, 52, 53, 54, and 55. I do not know if the figures on pages 42, 45, 56, 57, and 59, under the column "Truck", include livestock brought in from the feedlots upon which the Stock Yards Company collects its charges under Item 12-A of its tariff. The figures on pages 46 to 51, inclusive, represent the purchase of livestock by traders and order buyers and most traders are speculators (T. 173). I do not know if any resales are included. These are the purchases. I do not know what they did with the stuff. They may have sold it or they may have shipped it out. It is purchased by traders and order buyers. [fol. 899] They may have bought it on orders. There is one item of 666 head which were brought on order and 47 head that seem to have been bought and shipped out (T. 174). As to the balance, I do not know if it was resold or what happened to it. The same thing would be true of pages 60 to 65, inclusive (T. 175).

[fol. 900] Traders and Speculators

The figures on page 91 include so-called resales by traders and speculators (T. 179). There is no relation between the figures shown on that page and the number of sheep sold [fols. 901-937] by traders and speculators and shipped to the country for the month of January. I think I know the practice of respondent relative to the collection of one-half the yardage on resales by traders or speculators. I think the practice is that when livestock is resold that charge is made. Witness first stated that he recollected that the practice was to charge the reyardage rate on resales of livestock resold and reweighed in the commission division (T. 180) but later stated that he thought the Stock Yards Company charges one-half yardage on all resales made by traders or speculators regardless of whether they are made in the commission men's sales area except on sales which go to the country or to stockers or feeders (T. 181). I do not remember that there has been any change in that prac-

tice. I will look it up and give the correct status as I find it to be (T. 182).

[fols. 938-960] Anchor Serum Company

The Anchor Serum Company is purely an outside industry. Any rental or other revenue which respondent receives from the Anchor Serum Company is likewise outside revenue. If this property is not used and useful, all the business that respondent does with that company that pertains to that property would likewise be outside of my idea of stockyards use. That would apply to all other similar outside enterprises that respondent may carry on. I do not want it to be understood that by eliminating any property owned by respondent from the rate base for yardage and feed rates and stockyards services, there would actually be a confiscation because respondent may conduct any business, and if successful in it I feel that respondent would be under no obligation to include that revenue in the stockyards income, because it is an income from an outside industry (T. 302). That would apply to income respondent receives from the use of the loading and unloading facilities. Counsel for the Government admitted that a portion of the Anchor Serum Company tract which is in Zone A was included by the Secretary as used and useful property in his former decision (T. 303).

[fol. 961] Feedlots

Other feedlots excluded for substantially the same reasons as Item No. 24 are covered by Items 6, 48 and 42, although there is some difference in respect to Item 42 from the other feedlots which is brought about by the lease to which I have referred. That is the only item of difference except that some of these facilities are used for different purposes. I have used the phrase several times, and it appears on page 153, line 2 of Government Exhibit No. 108, that the leases to these private feedlots have been allowed to expire (T. 370). I learned that in this way: the last time I called for the existing leases and was given [fol. 962] the lease file and did not find these leases, I was told these leases had expired and had not been renewed. I did not inquire in what manner they had expired. It may be true that they were all terminated as of the effective date of the tariff which first included item No. 12-A. I was

not informed as to just how they expired or when. The compensation for the use of feedlots is now covered by a tariff provision except in the case of the Rockhold lease where there are other considerations. I am referring to the entire lease and the list of properties attached to and made a part of the lease (T. 371). As to the balance of the feedlots each of the users of these feedlots pays the respondent under the provisions of item No. 12-A of the tariff. I learned that these feedlots are controlled by the users, as stated by me in Government Exhibit No. 108, by observation and conversation with the people who are operating them and the description of the manner in which they operate them. I saw some of the operators while they were on the property. I saw them in other places. By "control," I do not mean that respondent has no right on these premises. I presume they have the right of inspection or any rights the owner of property let to an independent operator would retain. By "control," I mean operating control. These operators who have the use of these facilities operate them in connection with their feeding business (T. 372). I think they have more control of these facilities than a commission man has of the pens that are alloted to him because the feedlots are more of an exclusive proposition and are not used for public marketing purposes, but for the private business of the operators. While a commission man is using sales pens allotted to him he has exclusive use of those pens. The stockyards, of course, reserves a right to change these allotments at [fol. 963] will, and there is more or less shifting of the use of commission pens than there could be of these private feedlots. That is because the use is more or less a daily proposition. It is more of a changeable proposition, and these feedlots where livestock is fed for a considerable length of time are more permanent than the pens in the stockyards where livestock is held for sale. I do not know whether or not respondent reserves a right to change the allocation of these feedlots at will, but presume it does. I have never found any agreement, nor have I been advised whether they reserve that right (T. 373). If there is no other agreement than the published tariff I do not know whether respondent would have that right. I do know that they have been used by the same tenants for considerable periods of time and in most cases by the same tenants that

occupied them as feedyards before that rate was inserted in the tariff.

Some of these feedlots are entirely separated from the other pens and enclosures of the Stock Yards Company. Item No. 33 covers the O'Connell feedlot which is entirely separate, and other portions of the O'Connell feedlot south of that tract are entirely separated. The feedlots in what was formerly known as the Southern cattle division are separated from the stockyards in which livestock is held for immediate sale, the Rockhold feedlots are separated, and Stevens and William feedlots are entirely separated and located over across the tracks in the city. The northerly portion of the land where O'Connell feeds livestock under item No. 12-A of respondent's tariff, immediately adjoins the storage pens of Armour and Company. A small portion of that area covered by Item 6 adjoins the stock drive between the Armour cattle storage pens and the O'Connell feedlots (T. 374). The section of the O'Connell feedlots that is included in the Anchor Serum lease is [fol. 964] south of Item 6. One could traverse the land that its now used by the O'Connell feedlots from that stock drive to any portion of the land so used. The feedlots in the old Southern cattle division are separate and apart from the adjacent pens. By physical location between those feedlots and the hay barn there is an alley or driveway. It is about twice the width of an ordinary stockyard alley. It is used, among other purposes, in connection with the hay barns, and that alley immediately adjoins to the south of the feedlots (T. 375). On the east side there is a general alley separating the feedlots from the sheep sheds and the company's stable. It is the width of an ordinary stockyard alley. It has a clearance on the west side of the sheep sheds, and might be used in connection with the sheep dipping facilities. It has been included as used and useful (T. 376). The facilities covered by Item 42 are just across the Belt right-of-way from the drive-in sheep division. Those feedlots in the city limits are in the old horse and mule division. At the time the Southern cattle division was constructed it was used as part of the stockyard facilities. At that time it was in the stockyards. Its use was discontinued, the same as the use of the Southern cattle dock, and for the same causes. At the time the horse and mule division was originally constructed, and for a number

of years thereafter, it was used for stockyards services and was a part of the stockyards (T. 377). I allow the manure dump in Zone N. As to location that is just as separate and apart from the commission sales area as most any portion of the entire property. At the time the horse and mule division was used for stockyards services it was used for the sale division of horses and mules. When the Southern cattle division was used it was used for the sale of Southern or ticky cattle. It is not my understanding that when live-[fol. 965] stock is consigned direct to the feedlot operators through the stockyards and is not offered for sale at the stockyards that the initial yardage charge is made, but because no sale is made a second yardage is not charged. My understanding in respect to livestock consigned direct to one of those feeders and not sold and not consigned to a commission company is that the yardage charge would be waived under the paragraph of the tariff which provides that shipments going through and destined to be forwarded to country points would not be subject to yardage charges (T. 378). I think all this livestock is regarded as forwarded to the country by the Stock Yards Company. I do not recall asking Mr. Topping about that. I discussed that at some length with some official, and I think it was Mr. Black who, I think, informed me on that. My recollection is that such livestock was considered the same as livestock forwarded to the country without sale in the stockyards. It is my recollection that Mr. Black was my source of information. I also recall that I discussed that point with one of the operators but do not remember just which one it was.

On page 154, at the end of the second paragraph, of Government Exhibit No. 108, I make certain statements about buyers inspecting livestock in the feedlots (T. 379). I there state that the packer buyers may inspect the livestock in these feedlots, but formal sales, weighing and delivering are consummated at the stockyards. By "stockyards," I mean the pens and other enclosures and their facilities in which livestock is held for sale. Notwithstanding that statement I still think that these facilities are separate and apart from the facilities operated as a public market. Sheep fed on these feedlots may be inspected, but they are not actually sold. The sheep are there so that one can go down and inspect them. There is not any restriction as to any-[fol. 966] body going in and looking at the livestock. I do

not know, but I think the feeders would naturally do a lot of sorting (T. 380). I am not familiar with just what they do except operate as a feed yards. I am not familiar with whether they are chalked. I know what the term means. It means to mark classifications or grades or groups of animals by which they are classified differently. My understanding is that sheep are not actually sold on these feedlots. They are not held on these premises for sale. I do not understand it to be true that sheep are displayed, may be seen by buyers, and sorted, graded, chalked and sold in exactly the same manner as sheep are sold in the sales division in the commission men's pens. I understand they are not held on these facilities for sale and that the sale is consummated when they are brought back into the stockyards. I do not know if the buyer and seller agree as to the price when the sheep are on these feedlots (T. 381). As to sheep viewed by packer buyers and purchased, I do not know if anything is done after they arrive on what I consider stockyards property other than driving them to the scales, weighing them, temporarily yarding them, and then driving them to the premises of the packer buyers.

I used to work for railroads. It has been a good many years since I was connected with the railroad business, but at that time I was reasonably familiar with the feeding in transit privilege at certain feed yards for which the railroads publish a tariff charge. There was some arrangement whereby animals could be taken off the cars and held for some time for 8½ cents and then reshipped at the balance of the through rate (T. 382). I do not remember just what it was, but there was a privilege granted for an additional compensation for stopping livestock off in transit at some farm or feedlot to fatten and finish them for market. [fol. 967] All the livestock that is placed on respondent's feed lots is finally sold and shipped or slaughtered. A majority of the lambs is sold on the St. Joseph market. I would not say a majority of the cattle is sold, although I know a great deal of it is sold on the market. If not sold I do not know what happens to it because there is no rule governing that. The owner may do as he likes. He does not have to bring it back to the stockyards. I would naturally think in the conduct of the business the owner would finally do something with the livestock.

These feedlots consist of pens or other enclosures and their appurtenances (T. 383). They are operated for compensation and profit by respondent, but not as a public market. They are operated for compensation or profit by the Stock Yards Company. I stated I was informed that they are not used for sales purposes, and that Mr. Black told me that livestock is held on these feedlots for feeding and fattening. I do not think they are held for sale or shipment. I think the party feeding this livestock contemplates both sale and shipment. I do not think it is a home for aged livestock (T. 384). After the livestock is fattened I do not know whether it is sold or shipped in commerce. The owner may sell them and may ship some in commerce, he may ship some that would not be considered in commerce (T. 385). I think it would have to go out of the State to be in commerce. I am referring to commerce as defined in the Packers and Stockyards Act. I read how the Supreme Court of the United States construed the Act in referring to commerce and am not informed as to what the Supreme Court has held. My opinion would bow to the Supreme Court. Livestock does not have to go out of the State to move from the commission sales pens of respondent to either Armour and Company or Swift and Company.

[fol. 968] I do not know how many people have fed livestock in the facilities I have designated as Stevens and Williams feedlots. The only information I have is what Mr. Stevens gave me. I asked Mr. Stevens about that and was told that practically all the livestock or lambs that have been fed over there were the lambs of Stevens and Williams, but that some other livestock had been fed. Mr. Stevens referred to one lot which he had fed for another owner (T. 386). I did not learn that other people had actually fed livestock over there. The livestock that Mr. Stevens referred to was to be fed for the owners under contract. I do not know about people going over there and feeding livestock themselves.

Referring to the statement on page 156 of Government Exhibit No. 108 at the beginning of the paragraph wherein it is stated that Swift and Company and Mr. Rountree may alternate in the use of certain pens by mutual agreement among themselves, I learned that from Mr. Black. Mr. Black first told me that Rountree had retained two pens in the west end of a certain shed marked on the map as

sheep feeding shed. When I was there I found Swift and Company and Rountree were alternating. I found some of Swift's lambs in the pens that had been designated to me as the Rountree pens, whereas some of the Rountree sheep were in some other pens (T. 387). I concluded from that that it was a mutual agreement between them as to just which pen would be most convenient for either one of them to use at certain times. It did not occur to me that the Stock Yards Company had designated the alternative use by these parties as their needs required, because I had been told by Mr. Black that the other specific allotment had been made by the Stock Yards Company. I do not claim that once they allot a feedlot to a person that the Stock Yards Company can never take it back. They might re-[fols. 969 & 970] arrange or re-allocate these facilities. I do not know whether it can or not unless it has some arrangement with the people who establish their feeding facilities in these lots. I do not know of any such arrangement. It would be a managerial problem to allocate and re-allocate various of these feedlots to parties desiring to use them (T. 388).

It is my contention that this lease to which I have referred on page 160 of Government Exhibit No. 108 gives Mr. Rockhold the exclusive use of facilities enumerated on page 161 for the reason that having acquired by lease the use of the equipment and certain other permanent fixtures and improvements, that it would be impractical if not impossibe for anybody else to use them at the same time Rockhold is using that equipment and the other facilities included in the lease. I do not know whether or not anyone actually has used these same facilities during the year 1932 at the same time Rockhold was using them. This lease has expired unless it has been renewed. I do not know if this property and these facilities are now leased to Mr. Rockhold. It is my understanding that Rockhold or the Rockhold Feeding Company pays the charges specified in item 12-A of respondent's tariff for all livestock fed by that company (T. 389). Item 23 is not used in connection with the feedlot facilities. It is not used for any purpose. I base that statement on my inspection and not on what Mr. Black told me (T. 390).

[fols. 971-973] Item No. 42, point E, approach between the Belt Railway and sheep barns, 28,901 square feet, includes an area used for a roadway. It is the area between the Rockhold sheep feeding barns and the Belt Railway tracks. It is not occupied by the other items indicated under Item 42. All the feedlot business passes over this area and roadway. Anyone could use it because it is not fenced, but they would have no occasion to use it unless there is an outlet to the west. I have never observed any truck parking except trucks and automobiles of the feeding companies. I think there is no parking of trucks that go into the sheep truck-in division. There is a large parking area immediately south of the railroad tracks and adjacent to and adjoining the sheep truck unloading docks (T. 395).

[fol. 974] Transit House

The use of the Transit House is substantially the same as it was in 1929 (T. 401). It is my understanding that the patronage of the Transit House consists principally of livestock truckers who are in the commercial trucking business. I do not base that statement on any investigation of the registrations. I do not know the number of registrations in the months of November and December, 1932 which were actually shippers. The Secretary in his prior decision allowed the Transit House as used and useful (T. 402).

Baby-Beef and Pig Club Show

I am familiar in a general way with the 4-H Club Show held every fall at the St. Joseph Stock Yards. It uses for a limited period a part of the facilities which I have designated in Government Exhibit No. 107-A as the Stevens and Williams Feedlots (T. 402). It also uses the entrance which is lot No. 6. That condition existed at the time of the prior hearing. Lot No. 6 is also a means of access to the rear of the Transit House. It can be so used. It is the intervening space between the Transit House and the so-called harness shop. There is an alley in the rear of the Transit House, but I do not know whether it is open to the east or not. If it is closed, then the only access would be via this roadway across lot 6 (T. 403). Lot No. 6 is paved so that trucks and vehicles of any sort which want to drive to the rear of the Transit House with provisions can readily

do so. I have made no specific investigation to determine the exact area in the old horse and mule division which is occupied by the 4-H Club Show. I think the Transit House is used by the 4-H Club boys and girls at the time of the show. It has been the custom of the 4-H Club members to [fols. 975 & 976] stop at the Transit House (T. 404). I do not recall any other facilities at the St. Joseph Stock Yards other than these facilities of the old horse and mule division which are available and suitable for a show of the type of this 4-H Club show. I do not know about the big dinner at the Transit House for these boys and girls, and have no idea how many of them come and actually enter animals (T. 405).

Redirect examination:

Resale yardage is covered by item 1 of respondent's tariff which is on page 2 of Government Exhibit No. 108, and reads as follows: "Livestock resold in commission division one-half of the above rates additional will be collected." It is my understanding that that is the only re-yardage charge made and collected (T. 405).

[fols. 977-979] Recross-examination:

On cross examination I stated that Mr. Topping's statements of the practice in respect to re-yardage confirmed the recollection I had of it, but stated I was uncertain and desired to look it up. I have not looked it up as a matter of practice (T. 413).

[fols. 980 & 981] Mr. Herman C. Henrici, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Direct examination:

[fol. 982] Cost of Reproduction Less Depreciation

Qualifications of Witness

Since the prior hearing I have been chief valuation engineer, Packers and Stockyards Division, Bureau of Animal Industry, U. S. Department of Agriculture, and that is still my employment. I have inventoried and appraised the

stockyards at Kansas City, National Stockyards, East St. Louis, Omaha, Sioux City and Wichita. I have inventoried and appraised the commission men's office furniture, fixtures, and equipment at the St. Joseph Stock Yards, Kansas City Stockyards, St. Louis Stockyards, and the Chicago Stockyards. All of this work has been done under my supervision and direction. Since the prior hearing in this proceeding my firm has appraised various office buildings in Kansas City, of which the New York Life Building is an example (T. 422). I participated in an advisory capacity in the appraisal of the New York Life Building.

Since the prior hearing, as an engineer or consulting engineer, my firm had charge of the remodeling of the New York Life Building, entailing an expenditure of $250,000. It designed a water distribution system for the counties north of Kansas City entailing a distribution system of 36 miles (T. 423). It has constructed and awarded contracts as engineers for a 700,000 gallon concrete reservoir in Marshall, Missouri. My firm does not do any construction work (T. 424).

Inventory

Since the close of the former hearing, December 17, 1929, I have taken steps to bring up to a later date the inventory of the structural and other property of respondent other than land. I came to St. Joseph about the latter part of August, 1932, and began the work and have been working at it off and on since then up to date (T. 430). It is now [fol. 983] complete and was completed prior to the convening of this hearing. The work was done by five engineers who are employed in my office with two assistants, all working under my supervision and direction. The engineers are A. T. Cushing, W. O. Galbreath, J. E. Johnson, A. F. Schramm, and H. E. McClintock. The assistants are Kenneth Snider and Robert Bush. The work consisted of bringing up to date the inventory included in this record as Government Exhibit No. 4, with various letter designations for the several volumes (T. 431). The maps and notes covering the different sections of the yards were divided among these men and they compared the maps and notes with the various buildings. Whenever it was found that a substantial change had been made, such as pens remodeled, the parts of the property involved were removed from

the inventory, and in cooperation with the Government auditors, the books of the Stock Yards Company were consulted for additions and betterments which had been made from the date of the original inventory to August 1, 1932 (T. 432). Mr. Kosters, of Stone and Webster Corporation of Boston, was in my office on August 25 and we agreed that the inventory or appraisal should be based on August 1, 1932. That corporation represents respondent in this proceeding in the inventory and appraisal of its property. Since August 1, 1932, there has been one substantial addition which Stone and Webster included in their inventory and appraisal and which was not set up on the books as of August 1, 1932, as an addition and betterment (T. 433). That is the viaduct which was set up in Stone and Webster's appraisal as the Illinois and Packers Avenue viaduct, which they valued at $18,610. I did not set up that viaduct for the reason that it was not on the books as of August 1 and, therefore, I felt it should not be put into the appraisal [fol. 984] on account of the danger in bringing this appraisal up to date at some future time that the item might be included a second time, if the same methods were used of using the book figures for additions and betterments. It is the practice of engineers in making an appraisal to have a cut-off date in order to avoid the confusion that might be incident to using separate dates. I know of no other substantial additions or betterments or replacements in respondent's structural property since August 1, 1932 (T. 434).

Government Exhibit No. 113 is index of plans and drawings of additions and betterments which have been made since the prior inventory and are supplemental to Government Exhibit No. 4-C (T. 435). Government Exhibit Nos. 113-A, 113-B, and 113-C are the envelopes which contain the additional or supplemental plans or drawings. They are blueprints of tracings which were obtained from the Stock Yards Company, and are merely copies of plans and drawings owned by and in the records of respondent. They were made under my supervision and direction and are true and correct copies (T. 436). After bringing the inventory up to August 1, 1932, I proceeded to make a reappraisal of respondent's property other than land as of August 1, 1932 (T. 437).

Unit Prices

I reappraised the entire property with the exception of additions and betterments which I took at book value. The same seven men mentioned before assisted me. Before coming to St. Joseph letters were written to material men and supply dealers in St. Joseph and Kansas City, who would furnish materials that might be used in the construction of the stockyards. We consulted with contractors and labor unions to obtain the schedule of rates which would be paid labor in the construction of these yards. We worked [fol. 985] up a labor formula which we thought applicable to St. Joseph and applied those prices which we obtained for material and labor to the inventory (T. 438). The general methods of appraising the property were the same I used in making the original appraisal which is Government Exhibit- Nos. 4-E to 4-I, inclusive, and as described in the abstract of record of my testimony in the former hearing. I got all my material prices from material men in St. Joseph or Kansas City. I used Kansas City prices because it is a larger market and could supply quantities of material with equal ability to similar firms in St. Joseph. I am speaking now of the cost of reproduction new. Kansas City is 65 miles from St. Joseph. There are some larger material dealers in Kansas City than in St. Joseph (T. 439). These material prices were prices laid down on the job in all instances, and the prices I used in my appraisal for materials were always the prices laid down on the job. The labor cost was obtained by reference to the labor union headquarters and in consultation with some contractors. The labor union headquarters were in St. Joseph and represented local St. Joseph unions in the various trades which would be required in the reproduction of the structural property of respondent. They furnished a union scale of wages in force on August 1, 1932, for the various types of work (T. 440). I do not know if there has been any reduction or increase in union wages since August 1, 1932, and have made no investigation to ascertain. I had no agreement with anyone acting for respondent as to the use of union wage scales. I used them because I felt that a project of this size, in order to be completed in the construction period estimated, would require union labor. The present is a period of great unemployment. There are

many men, both union and non-union, who are out of work [fol. 986] (T. 441). If respondent were reproducing its property, it could obtain in certain crafts non-union labor, but in certain other crafts they would have to use, on account of a limited supply, union labor, in which event it would be required that the entire job be union labor. I do not know this of my own knowledge, but that is my reason for using union labor as a basis. The labor cost is about 38 per cent of the cost of reproduction new. If I had used non-union wages instead of union wages, it would have decreased my labor cost. A wild guess would be that it would have decreased my labor cost 10 per cent. In order to answer accurately, it would be necessary to first assume what the non-union scale in the (T. 442) various crafts would be, and then substitute that scale in the labor formula and apply it to the inventory. I have not done this but I would say roughly 10 per cent. It would take me and my men probably a month to do this. It would mean recomputing the entire appraisal. I think it is my best judgment that it would be approximately a 10 per cent reduction of the 38 per cent, or 3.8 per cent of the bare material and bare labor (T. 443). The 3.8 per cent would be substantially of the entire reproduction cost new.

The vouchers referred to in Government Exhibit No. 114 show material prices of materials purchased by the respondent company for one year previous to August 1, 1932. These were used along with other material prices in making my appraisal (T. 444). The information which I obtained from local contractors as to labor costs was information which could not be obtained through the union. There were some crafts of which there is no union in the city, and in connection with those crafts I had to use the price for labor that was current in the city among contractors. I found that while the contractors make an effort to pay the union scale, in some instances they are paying [fol. 987] on a piece basis but are letting their records show the scale. In other words, one contractor said that in laying brick the men that he employed understood that he was to require them to lay so many brick an hour and that is all he paid them for. The payroll, however, showed the scale (T. 445). In other words, while the scale did not require a certain number of brick per hour, the contractor did. However, there is no way of knowing how much work

is done that way, piece work. The union wage scale does not specify how much work the worker shall do. I found at least one of the contractors was setting a definite amount of work to be represented by the union scale and was, therefore, really paying a certain wage for laying so many brick, regardless of the amount of time it required. I tried to consider the efficiency of labor in making my appraisal. I have not used the labor formula which was the highest productive basis, nor the lowest productive basis, but feel that the formula which I used was effective as of August 1, 1932. In order to apply the union scale of wages to the cost of construction, it is necessary to base it on a performance per hour or per day (T. 446). I did not use the exact performance which this contractor about which I was speaking required. I used a less performance which means a higher cost. I figured one mason will lay 1,000 bricks in eight hours, and it would require one and one-quarter hour hod carrier per hour mason time, and one foreman for 10 masons. That is the labor formula I used. A hoisting engineer would also be required. The contractor to whom I referred gave more brick than that per 8-hour day. I think it was 1,200, but could not state positively (T. 448). He was foreman for the Thompson Construction Company in Kansas City.

[fol. 988] GOVERNMENT EXHIBIT No. 114

The following is the general summary of the appraisal of the structures and equipment of the St. Joseph Stock Yards Company as of August 1, 1932.

	Repro. New Value	Cond. %	Repro. New Value Less Deprec.
Exchange Building Area	373,296	73.3	273,508
Cattle Division	621,274	77.2	479,638
Sheep Division	125,731	77.4	97,298
Hog Division	431,053	78.9	340,201
South of Hog Division	59,982	79.9	47,905
Southern Cattle Division	41,696	45.1	18,798
Company Stable Area	13,727	69.1	9,489
Horse and Mule Division	142,295	73.6	104,684
General Items	32,567	76.3	24,847
Rolling Equipment and Horses	Retired (Use Book Value)		
Miscellaneous Items	367,837	75.8	278,942
Total Before General Overheads (Revised Appraisal 1927 with Retirements)	2,209,458	75.82	1,675,310
Omissions and Contingencies 5%	110,473		83,766

	Repro. New Value	Cond. %	Repro. New Value Less Deprec.
"A" Sub-Total	2,319,931	75.82	1,759,076
Architects and Engineers 5%	115,997		87,954
Legal Expenses 1%	23,199		17,591
General Salaries and Expenses 2%	46,399		35,182
Liability Insurance (On Labor) 6.1%	51,015		38,680
Fire Insurance ½%	11,600		8,795
Taxes During Construction (1932)	24,126		18,292
"B" Sub-Total	2,592,267	75.82	1,965,570
Interest at 7% per annum for 6 months (½ construction period)	90,729		68,795
"C" Total Cost Exclusive of Land Value	2,682,996	75.82	2,034,365
Additions and Betterments Book Value—1927 to 1932 Auditors Report	128,041	100.00	128,041
"D" Total Value August 1, 1932 Exclusive of Lands	2,811,037	76.93	2,162,406

I have compared the union scale of wages used in my appraisal as of August 1, 1932, with the scale used in the appraisal as of June 30, 1929. The present scale is lower, *in some instances* 33⅓ per cent, some 25 per cent, and some 10 per cent. It varies. For instance, in 1929 carpenters were figured at $1.00 and in 1932 at 75c, which [fol. 989] is 33⅓ per cent less. Painters, the same difference in price; electricians, 10 per cent, being reduced from $1.10 to $1.00; plumbers, from $1.25 to $1.00; sheet metal workers, $1.12½ to 87½c; brick layers, $1.50 to $1.25; hod carriers, 75c to 60c; plasterers, $1.75 to $1.12½; stone masons, $1.50 to $1.25; steam fitters, $1.25 to $1.00; steam fitters' helpers 62½c to 40c (T. 449); lathers, $1.37½ to $1.25; tile fitters, $1.37½c to $1.25; composition roofers, 75c to 40c; slate roofers, $1.35 to $1.10; common labor, 50c to 40c; teams, $1.00 to 75c.

Government Exhibit No. 4-I contains the labor formula which compares with the proposed exhibit. Some of the property I appraised was not, strictly speaking, structural property, such as horses, wagons, office furniture, and things of that nature. I obtained the value of these from the book value on respondent's books in the case of automobiles and horses because they are changing from month to month, and I thought the actual price paid for horses and automobiles would be properly reflected by the books. Furniture and fixtures were appraised by applying current prices to the inventory (T. 450). These prices were obtained from supply dealers. The furniture and fixtures which I appraised were not new and were more or less used,

some of it for several years. The values I placed on these articles were not the price at which they could be taken out of the offices and sold at second hand. I appraised the furniture and fixtures new, or if an item of furniture was not commonly made today, I appraised it at its new value at the nearest thing to it that is made today in order to get its reproduction new value (T. 451). If a calculating machine is no longer made and marketed, I took the price of the nearest approach to that machine which is now made and marketed. I ascertained the cost of reproduction new of furniture, fixtures, wagons, manure dump cars, and all that class of property.

[fol. 990] Overheads

To the bare cost of material and labor I added certain percentages which are known as construction overheads. These are the overheads which would commonly be incurred by a contractor in building a property. To the total of material and labor plus construction overheads I added an item of .5 per cent for contingencies and omissions and obtained a total. To this total was added for architects' and engineers' fee 5 per cent, legal expenses 1 per cent, general salaries and expenses during construction 2 per cent, liability insurance 6.1 per cent of the labor only, fire insurance ½ per cent (T. 452); the actual taxes paid during 1932 for the year 1932, interest during construction at the rate of 7 per cent for 6 months, being half of the construction period. This gave a total to which were added additions and betterments from 1927 to 1932. That gave a final total, exclusive of land. I make a distinction between construction overheads and general overheads, construction overheads being those commonly incurred by contractors and which I have shown throughout my appraisal where they would have occurred, and they are not included in the general overheads. They are included in the base on which certain of the general overheads are calculated as percentages. The total, exclusive of land, is $2,811,037, which is the cost of reproduction new (T. 453). Omissions and contingencies, 5 per cent, amounting to $110,473, is included in the base on which the other percentages or general overheads are calculated. One of the things that omissions and contingencies are to cover is things omitted from the inventory in spite of care. Other things are, for

example, the drawings that were given by the Stock Yards Company for calculating the elevated water tank. Upon [fol. 991] comparing appraisals it was found that when the excavation was completed to the depth shown by the drawings, the soil was not suitable for carrying the load which would be imposed by the tank full of water, so it was necessary to go deeper and expand the footings to a much larger degree. There is no way of telling this from looking at it from the top of the ground, other than from the drawings. In that instance I made my appraisal based on the original drawings, whereas those drawings were changed. Now, those elements in various forms appear now and then in any appraisal. The drawings furnished did not show these expanded footings (T. 454) and that is an item included in these omissions and contingencies. Contingencies are akin to omissions, in that they cover the general error that creeps into estimates which have not been taken care of altogether in the estimates. For instance, the construction program and the labor formula contemplate some delays incident to bad weather, but nothing of a prolonged character such as a hazardous fire or a continued storm for an excessively long time, or unusually bad soil conditions at some place which require a different type of construction. Those are the things that are ordinarily contained in contingencies. It is a margin of error. In the past I have found that such omissions and contingencies as have later been determined, plus some which have not yet been determined, add about 5 per cent. This 5 per cent comes from my own experience in rechecking inventories (T. 455). It has some relation to the experience of other engineers as this percentage is very generally used. Customarily appraisal engineers make one inventory and then base an appraisal on that and allow five per cent for the margin of error. The repeated checking of an inventory would reduce the margin of error. I made an inventory in 1927 which was brought up to date in 1929 and again in [fol. 992] 1932. It is true that the inventory of 1932 would be more accurate than in the case where there had been no rechecking, but the example I gave of the foundations for the water tank is an example of things that frequent checking of the inventory do not develop (T. 456). There has been no comparison of the inventory until Mr. Kosters and I made it in 1932. Prior to that time, inventories were not compared. If 5 per cent is regarded as a fair allowance

for omissions and contingencies where just one inventory has been made without being rechecked several times, it is rather liberal to allow the same percentage where all this checking and double checking has taken place. That is just one illustration of the liberality of my procedure.

The general overheads stated in Government Exhibit No. 114 are the same type of overheads used in my appraisals of 1927 and 1929 (T. 457). The liability insurance has been changed, the fire insurance has been added in the 1932 inventory and appraisal, and taxes during construction have been increased. Those are the only changes. The liability insurance has been increased because I used the wrong rate in 1929. The rate I used in 1932 has been checked with insurance companies and it was found that 6.1 per cent of the labor was the correct amount. I used 2 per cent in 1929. I did not have any overhead for fire insurance during construction in 1929. This is ½ per cent of the cost of material and labor. The reason taxes during construction were increased was because I took the taxes actually in effect (T. 458) at the stockyards and taxes have been increased until in 1932 they were $24,126 a year. These are taxes on structures and land, being the total tax bill (T. 459).

[fol. 993] Depreciation

After the cost of reproduction new was found, the next [redacted]as to ascertain the condition percentage of the vari-[redacted]ructures in order to arrive at the cost of reproduction less depreciation (T. 459). My testimony on pages 107 and 108 of the printed abstract of the record represents the method of arriving at condition percentages, and on those pages I stated the principles used in the previous appraisal and the same principles were used in the 1932 appraisal except that I had each of the five engineers furnished with a list of all the property (T. 460). Each of these engineers put down on paper his conception of the proper percentage condition of that property and this is shown in Government Exhibit No. 114 under columns headed 1, 2, 3, 4, and 5. The numbers refer to my engineers Cushing, Galbreath, Johnson, Schramm and McClintock. The column headed "Average" is a mathematical average of the five estimates. These estimates were made independent of each other. One man did not know what the other percentages were until

he compiled his report. I recall something about Mr. Schramm and Mr. Galbreath being sent out to make a reexamination and report on questions arising during the previous hearing in respect to condition percentages. I do not have a very accurate recollection of this (T. 461). My composite condition percentage is 76.93, as shown on page one. In Government Exhibit No. 114 the percentages for each building are applied to the value of the building. For instance, on the page entitled "Detailed Summary" which follows about three pages after the general summary, the condition percentage of the Exchange Building is 72.6, which is the same as that shown in the composite condition percentage. That is the average of five men's estimates. [fols. 994-1001] That principle carries all the way through. Those different percentages applied before the general overheads result in 75.82, which are in principle applied to the overheads. The additions and betterments, however, are not depreciated (T. 462) because I took them at book figures and considered that they were only five or six years old and therefore not sufficiently depreciated to warrant a figure for depreciation. They would suffer some depreciation in that period, and probably the inspection method might have shown some percentage of depreciation. That was giving respondent the benefit of the doubt. The average condition percentage of respondent's property other than land in the 1929 appraisal was 78.7 (T. 463), in 1927, 76.3, and in 1932, 76.93. The figure given for the year 1929 is the one that appeared in my previous appraisal exhibit, and if the exhibit was revised, then the figures would be revised. I do not know if the exhibit was revised. The fact that the property had a higher condition percentage in 1929 and 1932 than it did in 1927 indicates that the property is well maintained (T. 464). It shows that the property has not deteriorated. That would be due mostly to repairs. In my opinion as an engineer, the repairs and replacements such as have been made have kept the property in practically as good condition today as it was five years ago (T. 465).

[fol. 1002] Depreciation Reserve

Depreciation and Composite Life Tables

The probable life of the structures of respondent is shown in Government Exhibit No. 114, the section of the

exhibit consisting of 4 pages entitled "Depreciation and Composite Life" (T. 489). I have found separate life expectancies for various units of property and from those calculated a composite life for the property as a whole of 24.8 years. As a background for this portion of the exhibit I had the record of some twenty commissions and engineers in which the life of various buildings and structures was recorded. I had the observation of each particular building or structure in mind with a view to all the elements which would cause it to be depreciated to zero. Having in mind all the causes of depreciation, such as rot, rust, decay, wear and tear, obsolescence and inadequacy, I placed the life expectancy opposite each item of property (T. 490). In the first column lettered A the reproduction new value of the property is given. In the second column, B, is the life expectancy in terms of years. In the third column, C, is the rate of depreciation per year. It is 100 divided by the life ex- [fol. 1003] pectancy in years. Column B is the result by applying the percentage in Column C against the value in Column A which gives the amount of depreciation reserve estimated on a so-called straight-line basis. I had available various reports made by public utility commissions and engineers which gave the life period of buildings which had been erected and had come to the end of their lives. Those were all types of buildings, including office buildings, hotels, factories, residences, and apartment houses (T. 491). These did not include stockyard structures such as pens and fences. The most of the buildings included in these reports were either in downtown business districts, industrial areas, residential districts of cities, or in small towns and isolated communities. From my knowledge gained from the reports and my own experience and observation, wear and tear, rust, rot, and decay are not large factors in bringing buildings of this country to the end of their lives. Obsolescence is the large factor. It is the result of American progress and the growth of American cities. Inadequacy plays a considerable part in the end of the lives of these buildings (T. 492). When there is an office building on a downtown lot and the growth of the city and the business of the city lead the owners of that building to believe they could rent much

more space if they had more space to rent, it is usually neither practical nor possible to erect an annex to the building. The only thing is to tear down the old building and erect a larger one, or erect a larger one some place else. This same thing is true of obsolescence. The American taste and the advance in the arts combined are tending more to the luxuries of life in recent years. The demand is for buildings, whether they be hotels, apartment houses, office buildings, or residences, with what we call the modern improvements. All this tends to bring these build-[fol. 1004] ings to the end of their lives (T. 493). From a purely structural standpoint most of these buildings were in usable condition when torn down. The reports I have studied include factory buildings or other industrial buildings. Some of the major factors which bring such buildings to the end of their useful lives are as follows. Originally buildings were built of frame structure. Cost of insurance and the safety of occupancy required that fireproof buildings be erected in place thereof, or a building was built to carry a certain load per square foot of floor area and the demands of the occupants were such that those loads be increased. In such case it is sometimes more economical to tear down the building and put up a building of a stronger frame, a different type of building. That may came from a change in the use to which the building is being put (T. 494). Factories or other industrial buildings ofttimes come to the end of their lives through the insolvency of the owner and his ceasing to use them. At other times they come to the end of their lives because it is no longer economical to continue in that business at that place. I have observed what has happened in the jobbing district of the city of St. Joseph. I have observed that a number of buildings once used and occupied are now closed (T. 495). I do not know whether or not any of the buildings at the St. Joseph Stock Yards have become inadequate. If the Exchange Building became inadequate it would be practicable to erect an annex to take care of that inadequacy (T. 497). Insolvency is one of the elements that enters into the life of the property. For example, a Kansas City firm became insolvent after a good many years of successful operation of a factory building.

Parts of the building had to be remodeled for other tenants and other parts just simply had to be destroyed in order to save taxes (T. 498). Life tables simply take into con- [fol. 1005] sideration the time elapsing from the time the building was built until the building ceased to exist. In all cases the reason for its ceasing to exist is not known. It was torn down for some reason but that represents the life of that building. A percentage could not be applied to the life tables as being equivalent to the amount due to insolvency. The fact is that these life tables which have been used as a basis were obtained from buildings all over the United States and I could not say just how much was due to insolvency but I imagine not a great percentage (T. 499). I have not taken into consideration the question of the insolvency of stockyards companies because I knew of no stockyards that had become insolvent. I know of none that have been abandoned (T. 502). The competitive factors in respect to procuring tenants in the Exchange Building are not the same as exist in downtown areas (T. 503). There is no other such space for rent within the area of the St. Joseph Stock Yards other than provided by the stockyards itself. There are some buildings for rent which might be used as offices outside of the stockyards area. They are two or three blocks away in the business district of South St. Joseph, east of the stockyards. Intervening are store buildings and residences. It would not be practicable for persons conducting their business upon the stockyards to maintain offices in the buildings to which I have referred (T. 504). In reports to which I had access and to which I have referred there are included properties of railroads in the nature of pens and fences. They would be partly pens and fences for holding livestock. I do not know what type of livestock pens were included in connection with the railroads. They are of a general type of construction. These tables did not include any pens or fences in what are known as public markets. They did not include any property of [fol. 1006] any kind in a public stockyards (T. 505).

Government Exhibit No. 114

The following is the depreciation and composite life table taken from Government Exhibit No. 114:

A—New Value. B—Life in Years. C—Annual Rate of Depreciation in per cent. D—Amount of Depreciation annually.

Pages	Structure	A	B	C	D
1	Exchange Building	330724	40	2.5	8268
53	Exchange Building Annex	15041	40	2.5	376
60	Hose House and Equipment	2409	30	3.3	79
63	Garage, Brick and Concrete	4885	35	2.9	142
66	Garage, Brick and frame	3323	30	3.3	110
68	Garage, frame	2215	20	5.0	111
70	Receiving Office	12776	40	2.5	319
83	Underground Water	1285	50	2.0	26
84	Outside Electrical	638	15	6.7	43
108	Cattle Commission Men's Pens and Alleys	232038	15	6.7	15547
163	Cattle Traders Pens & Alleys	89206	15	6.7	5977
191	Cattle Packers Pens & Alleys	90764	15	6.7	6081
216	Cattle Drive-In Section	7864	15	6.7	527
219	Cattle Scale #3	10369	30	3.3	342
225	Cattle Scale #4	10454	30	3.3	345
226	Cattle Scale #5	10454	30	3.3	345
226	Telephone Booths	40	15	6.7	3
227	Cattle Scale #6	9740	30	3.3	322
231	Cattle Drive-In Scale	3271	30	3.3	108
234	R. R. Unloading Docks	49445	40	2.5	1236
239	Branding and Dehorning Chutes	2087	15	6.7	140
243	Tuberculosis Testing Barn	8247	20	5.0	412
245	Cattle Dip	2097	30	3.3	69
247	Hay Barns Nos. 1 to 8	82825	40	2.5	2071
251	Hay Scale and Office	2397	40	2.5	60
255	Packers Cattle Drive	3341	15	6.7	224
256	Yard Lighting	576	15	6.7	39
257	Armour Holding Pens	4540	15	6.7	304
258	Sewer and Water Outside Area	1519	50	2.0	30
259	Sheep—Commission Section	65760	20	5.0	3288
267	Sheep—Packers Section	29442	20	5.0	1472
269	Sheep—R. R. Unloading Docks	12576	40	2.5	314
272	Sheep Dip	7109	30	3.3	235
278	Sheep Scale No. 1	9768	40	2.5	244
285	Outlet Sewers (Sheep Division)	1076	50	2.0	22
305	Hog Commission Section	246102	20	5.0	12305
348	Hog Packers & Order Buyers Section	83255	20	5.0	4163
362	Hog Drive-In Section	31450	20	5.0	1573
[fol. 1007]					
375	Hog Scale No. 10	8398	40	2.5	210
384	Hog Scale No. 11	6266	40	2.5	157
386	Truck Hog Scale	1917	40	2.5	48
390	Cripple Scale	247	25	4.0	10
391	Hog R. R. Unloading Docks	45742	40	2.5	1144
402	Packers Drive	1341	15	6.7	90
403	Water—Outside Area	273	50	2.0	5
404A	Packers Covered Drive	6062	20	5.0	303
406	Immunization Plant	15731	30	3.3	519
425	Corn Elevator	14457	50	2.0	289
438	Timber Water Tanks	11368	20	5.0	568

Government Exhibit No. 114—Continued

Pages	Structure	A	B	C	D
443	R. R. Unloading Docks	18426	40	2.5	461
457	Southern Cattle Division Pens and Alleys	13064	15	6.7	875
466	Cattle Scale # 2	5460	30	3.3	180
470	R. R. Unloading Dock	21880	40	2.5	547
474	Packers Drive	1292	15	6.7	87
475	Company Stable	12989	40	2.5	325
482	Shed E. of Company Stable	210	20	5.0	11
483	Miscellaneous Fence, etc	528	15	6.7	35
487	Horse & Mule Fences and Gates	1225	15	6.7	82
490	Horse Barn No. 1	17363	40	2.5	434
494	Shed between Horse Barn No. 1 and No. 2	830	20	5.0	42
496	Shed near Horse Barn No. 1	359	20	5.0	18
497	Horse Barns Nos. 2 & 3	26116	40	2.5	653
502	Shed between Horse Barn No. 3 & 4	822	20	5.0	41
504	Horse Barns Nos. 4 & 5	32959	40	2.5	824
509	Shed No. 6	2060	20	5.0	103
512	Horse Barn No. 20	15743	40	2.5	394
520	Horse Barn No. 21	31005	40	2.5	775
528	Horse Barn No. 22	3712	40	2.5	93
529	Shed No. 23	3967	20	5.0	198
533	Blacksmith Shop	1025	20	5.0	51
535	Sewer and Water—Horse Div	5109	50	2.0	102
536	Reinforced Concrete Reservoir	16175	40	2.5	404
539	Plumbing & Paint Shop	1388	30	3.3	46
542	General Yard Lighting	2607	15	6.7	175
544	Foot Subway	11790	50	2.0	236
546A	Cement Storage House	607	20	5.0	30
549	Outside Paving and Sewers	145436	35	2.9	4218
551	Brick and Concrete Garage	3550	40	2.5	89
554	Transit House	132726	40	2.5	3318
597	Yard Lighting E. of R. R.	260	15	6.7	17
600	Valve Connection to Swift & Co.	1342	25	4.0	54
601	Miller Sheds (Rockhold)	15190	20	5.0	760
610	Thomas McKee Shed	840	20	5.0	42
614	Dutton Sheds (Swift)	5535	20	5.0	277
627	Roundtree Shed (Swift)	17011	20	5.0	851
636	Corrigan's Office	1080	40	2.5	27
638	Harness Shop	11932	40	2.5	298
651	Journal Building	17993	40	2.5	450
666	Leased Lots Southern Cattle Division	13024	15	6.7	873
[fols. 1008–1010]					
671	Fire Protection Equipment	369	20	5.0	18
672	Swift Viaduct	1549	20	5.0	77
	"A" Totals	2209458(av.)	24.8(av.)	4.037	89206
	Errors and Omissions 5%	110473			4460
	"B" Totals	2319931	24.8	4.037	93666
	Engineering and Architects 5%	115997			4683
	Legal Expenses 1%	23199			937
	General Salaries & Expenses 2%	46399			1873
	Liability Insurance 6.1% of Labor Only	51015			2059
	Fire Insurance 0.5%	11600			468
	Taxes During Construction	24126			974
	"C" Totals	2592267	24.8	4.037	104660

Government Exhibit No. 114—oCntinued

Pages Structure	A	B	C	D
Interest During Construction 7% for 6 months	90729			3663
"D" Totals	2682996	24.8	4.037	108323
Additions and Betterments (Book Value)	128041			5169
"E" Totals	2811037	24.8	4.037	113492

[fol. 1011] Unit Prices

My appraisal is not a valuation based on a trend in prices, or average prices, prevailing over a period of years. My appraisal was made by investigation of prices current at the time the appraisal was made. It represents my opinion of the fair and true cost of reproducing this property as of August 1, 1932.

My labor formulae were not built upon the highest degree of efficiency nor the lowest degree of efficiency. They were built upon a basis that I considered would be effective if the property were reproduced on August 1, 1932. It was the degree of efficiency which I considered to be fair in view of all the circumstances surrounding the reproduction at the time of my appraisal. From 1908 to 1911 I was in the contracting business. My firm, generally speaking, is an engineering firm which does not hire labor. My labor formulae come from various sources, by taking contracts [fol. 1012] which my firm has let, by asking for unit price bids and using the scale of wages at (T. 517) the time those contracts were let, from observing in various stockyards certain operations and various references that have been made from time to time, to published records of contracts that have been let, and to my personal judgment. Most of my sources do not involve actual stockyard construction. Of course, in the stockyards which I have appraised, I have made it a point to make observations of certain construction that was being made while I was in the stockyard. An important factor in determining these labor formulae is, of course, my own personal judgment. As to the weight given company vouchers, I observed when I established prices in each instance what the company had paid as part of the evidence but was governed more particularly by purchases which were made in carloads. Not very much of the material that was used by the stockyard and bought within

recent years would be applicable (T. 518). Actually, very few of the prices found on these company vouchers would find their way into my appraisal. I did not analyze the work orders of the Stock Yards Company. My experience with work orders is that they cannot be used without additional knowledge of what work was being done and observing it. I do not know the system of work orders used by the St. Joseph Stock Yards.

Overheads

My construction overheads are shown on page 3 of Government Exhibit No. 115. I am not familiar with organization expense as defined by Mr. Burnell in the prior hearing, but I have included an expense which is commonly called organization expense, which includes general office salaries and expenses incident to the general organization. It [fol. 1013] does not include preconstruction expense prior to the incorporation of the stockyard (T. 519). In other words, it does not involve any preliminary investigation, such as is sometimes set up in public utility valuations.

My overheads do not include cost of financing.

My overheads do not include any going concern value separately set out. In placing my values on the stockyards, I have included all the elements of material and labor and construction overheads and general overheads, and have not attempted to say whether there is included in the total value the element of going concern. There is not any specific item in my appraisal which covers going concern value.

I have not included interest on land during construction because I did not have the land values. It is a proper element of an appraisal over the construction period (T. 520). The same percentage which I allowed on physical structures, 7 per cent, should be allowed.

I cannot state how much of my item of omissions and contingencies applies to omissions and how much to contingencies. Even with a perfect inventory this item would be applied to an appraisal. There have been instances in my appraisal of stockyards where there has been practically an agreed inventory. In such instances I allowed 5 per cent for omissions and contingencies. I did that because it was the fair and proper procedure.

Depreciation

I gave no weight to the age and life of the property of the respondent, except as observed in determining existing depreciation. I paid no attention to it (T. 521). I probably could have found out the age of the property but made no inquiry. I do not think these five men actually knew the [fol. 1014] age of the property. The names of the engineers who are enumerated in Government Exhibit No. 114, in the rear portion of the exhibit under the heading "Condition Per Cent" and in the five columns headed 1, 2, 3, 4, and 5, respectively are: 1, J. E. Johnson; 2, W. O. Galbreath; 3, A. T. Cushing; 4, A. F. Schramm; 5, H. E. McClintock (T. 522). The figures used in arriving at cost of reproduction less depreciation are the figures contained in the last column under the heading "Av." They are the mathematical average of the five preceding columns. The instructions given these five men were as follows: I gave them a list of the buildings, a blank list, and told them to observe what the percentage condition of each building was, not to talk with any of the other four men nor to show the results of their work until they were all done, and I had tabulated the results. No further instructions were given. Mr. Cushing and Galbreath were in my employ at the time the 1927 appraisal was made. I do not recall that they fixed the depreciation in the way I did it in the 1932 appraisal. I think that as each man completed his portion of the work he expressed his idea of the condition percentage of that portion, but no effort was made to get (T. 523) a composite view of all the engineers on every building, such as was done at this time. Those were the only two of the five who assisted me in 1927. The condition percentage which I used in the 1927 appraisal was not the average of the opinions of those two gentlemen. My own personal opinion of the condition percentage was used in the 1927 appraisal. In the 1929 appraisal Mr. Schramm was added. I testified in the 1929 hearing that Mr. Schramm and Mr. Galbreath were the two engineers that assisted me at that time in fixing the condition percentage (T. 524). If I did so testify, and the record will show, that expressed the true facts. My own personal opinion of the condition per- [fol. 1015] centage was reflected in the percentages used in 1929. As shown by Government Exhibit No. 114, two or more engineers going out and viewing the same property

will not always arrive at the same condition percentage. The figures at which they would arrive would sometimes agree and many times differ considerably. That is due partly to the personal element which enters into the situation and partly to the ability to see all the elements and to convert what a person has seen into a percentage. One person looking at a building will see some defects that another person will not see, and those are the reasons for the differences. These men spend about one day and a half or two days viewing the property and making this report. In addition to that, of course each man had the benefit of checking the inventory so that he really spent more time on the property than that, but in this specific thing he spent about one day and a half to two days (T. 525).

In the 1932 appraisal I found the stockyards well maintained but observed some deferred maintenance because of preparations to rebuilding a certain section, or for one reason or another, but not to any great extent (T. 526).

In this appraisal I depreciated my overheads, and in the last appraisal I did not. The cause of the change was that I observed that the Secretary of Agriculture in his findings depreciated overheads, and I conformed to the prior decision of the Secretary.

The following is a description of the method that I would employ in arriving at the depreciation or condition percentage of the Exchange Building, for example: I would make a tour of inspection and examine the building, both inside and out, from basement to attic. I would observe the elements of obsolescence that had occurred. For instance, the elevators, while they are in operating condition and not [fol. 1016] of modern type no doubt, would be replaced with modern type of higher speed. I observed an open stairway which, in accordance with modern practice, is not being incorporated in the design of buildings. I would observe the condition of the floors, the walls, and the woodwork. I would examine the toilet facilities and from the observation of the entire building would arrive at what I considered the condition percentage of the building (T. 527). I would wait until I had finished the tour of inspection before I finally put down my figures. I might make notes as I went along and I might not. It would not be essential. I would apply the same method to the depreciation of the pen areas.

The five men I spoke about, who appear by number in Government Exhibit No. 114, followed this same method.

[fol. 1017] Depreciation Reserve

Depreciation and Composite Life Tables

At the time I made the depreciation and composite life table appearing in Government Exhibit No. 114, it represented my best judgment on the subject. After taking into consideration all the questions asked on direct examination by Mr. Bohannan, it still represents my best judgment. I do not desire to change it in any way. In making this table I took into consideration what I considered to be proper [fol. 1018] consideration of all the facts mentioned by Mr. Bohannan (T. 533). I think the table represents the fair composite life of the property of the St. Joseph Stock Yards Co. as of August 1, 1932.

[fol. 1019] I stated that I made no separate and distinct allowance in my appraisal for going concern value. It is possible that an article of property could have a cost which might be either greater or less than its value. Cost and value are not necessarily synonyms. In my appraisal I was [fol. 1020] technically seeking to obtain costs (T. 540). My figures attempt to set up my opinion of the value of reproduction cost of property and the reproduction cost less depreciation. I do not attempt to set up market value for the property. Values are established by me on the basis of the market value of the materials and labor, but that is not the market value of the property. It is the cost of reproducing and the cost of reproducing less depreciation. I valued the property as I found it, and, of course, the property is mostly used in connection with a going business (T. 541). Assuming that the St. Joseph Stock Yards had ceased to do business, had no business in prospect, ceased to be a going concern, the pens, fences, paving, and matters of that kind would have little or no value, market value depending partially on income. If someone undertook to reproduce the St. Joseph Stock Yards in a desert where there were no railroads, no roads, no livestock, and no business, that would tend to increase the cost due to lack of labor supply.

The reason no allowance was made by me for deeper cuts or deeper fills was because the land is appraised at its present level. If any major portion of it were either excavated

or filled, that portion would not be apparent to an appraiser of land at this time, and the land is, or will be, appraised at its present elevation (T. 542). If I had allowed the cost of filling in holes, ravines and things of that kind in my construction cost, and then the land appraiser appraised the land in its present improved condition, the practical effect would be duplicating values. The reasons for using 2-inch sand filler is because brick ordinarily are placed with a 2-inch filler, or bed, for the brick. That is the customary practice. It is good engineering practice. There is no practice with reference to the thickness of concrete. It depends largely upon the nature of the traffic which the pavement [fol. 1021] will have to bear. The reason I used different thicknesses of concrete was because I found different thicknesses. Gumbo is a type of clay which is more difficult to penetrate than ordinary clay. If the soil were gumbo, it would save the cost of shoring, which I figure on depths greater than 6 feet (T. 543). That is the reason I stated I would make no change in the price.

Recross-examination:

In the various exhibits I have prepared I have made an estimate as an engineer of the cost of reproducing the physical property of the St. Joseph Stock Yards Company and of the same cost less depreciation. There is no difference in the mechanical operation of finding the cost of reproduction new of a property that has a business and the identical property that has no business. The same is true of cost of reproduction less depreciation. I followed the same methods and principles in this appraisal as I followed in my 1929 appraisal.

Audit Prepared by Government Accountants

H. E. Bufkin, a witness, called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

I am the same H. E. Bufkin referred to on pages 111 and 112 of the printed abstract of record which is a part of the record in this proceeding (T. 546). I am still field auditor

for the Packers and Stockyards Division, United States De-
[fol. 1022] partment of Agriculture. Since the prior hearing I have made audits for rate hearings at Kansas City, Omaha, and Sioux City, and am still working on the audit at the latter place. These audits were for hearings involving the rates of stockyard companies (T. 547). I had assistance in preparing the audits to which I referred. Between the latter part of August, 1932, and November 25, 1932, I made an audit of the books and records of the St. Joseph Stock Yards Company covering the years 1927, 1928, 1929, 1930, 1931, and eight months ending August 31, 1932. An additional audit was made about November 25 covering the month of September, 1932, and in the last two weeks I have prepared an audit for the last three months of 1932, bringing the full year of 1932 into one yearly audit. All of this auditing was done under the direction of Mr. Bachmann, chief accountant for the Bureau of Animal Industry, Packers and Stockyards Division (T. 548). I was connected with these three audits as senior accountant, having immediate supervision and control of the making of them, under the general direction and supervision of Mr. Bachmann. In the first audit I was assisted by Messrs. Bolas, Hart, Muse and Baughman, who are accountants with the Bureau of Animal Industry. Messrs. Hart, Baughman and Muse assisted me in the audit referred to on page 112 of the abstract of record of the first hearing in this case (T. 549). Mr. Bolas assisted me in the audit covering September, 1932. Mr. Bachmann and I prepared the audit covering October 1 to December 31, 1932.

Government Exhibit No. 121-A is the audit for the years 1927, 1928, 1929, 1930, 1931, and eight months ending August 31, 1932. Government Exhibit No. 121-B is the audit covering the month of September, 1932, and Government Exhibit No. 121-C is the audit covering October 1 to December 31,
[fol. 1023] 1932. They were made from the ledger and subsidiary records in connection with the ledger which are payrolls, vouchers, bills, monthly statements prepared by the Stock Yards Company, and all sources of record that we could get hold of (T. 550). Those were the records of the St. Joseph Stock Yards Company, respondent in this proceeding. The examination was made in the office of respondent, and the records were submitted by officers and employees of respondent. In the process of auditing these

books the other accountants and I made rough pencil or other notes or work sheets for each of the five years to begin with as a set-up and trial figures for all this period, and branched out from those figures and finally wound up with the report as prepared. By "trial figures" I mean the Stock Yards Company's trial balance figures. We took figures from the books and placed them upon the work sheets and analyzed them (T. 551). When those original figures were analyzed they were restated in order to show on this report as nearly as possible comparable figures for each of the years. These reports, Government Exhibit- Nos. 121-A, 121-B and 121-C, were copied from the figures which were set up. I have checked, examined and compared the three proposed exhibits and find them accurate (T. 552). Taking the three exhibits together they constitute, in my opinion, a true and accurate reflection in summary form of the financial transactions of respondent during the years 1927 to 1932, both inclusive, as shown and reflected on the books and records of respondent(T. 553).

Government Exhibit No. 122 covers the number of head of cattle, hogs and sheep purchased by traders at the St. Joseph Stock Yards from August 1 to December 31, 1932, and was prepared by me from the records of the traders operating at the market. By "traders" I mean people [fol. 1024] designated in the Packers and Stockyards Act as dealers. The traders or dealers are designated by number (T. 554). The reason this exhibit covers only October 1 to December 31, 1932, is because the first nine months are included in Mr. Christensen's report. That report does not show the names of the traders but shows them by numbers. I have the names of the traders whereby I can identify them by reference to the numbers shown on Government Exhibit No. 122 (T. 555). By the use of the word "traders" I mean traders and order buyers. The figures on Government Exhibit No. 122 do not represent all the purchases made for the period indicated by all traders and all order buyers. They represent only trading accounts. There are some other purchases made during this period on the St. Joseph Stock Yards by order buyers which are not shown on the exhibit.

Each of the respective years 1927 to 1932, inclusive, are set up separately in Government Exhibit Nos. 121-A, B

and C, and each year is set up on a basis comparable with the set-up for each of the other years (T. 556).

Witness then produced the work-papers to which he had referred (T. 557).

Cross-examination:

Government Exhibit No. 122 shows purchases by traders. It does not follow that the traders resold this livestock on the St. Joseph market (T. 566). As to whether there is a difference between traders and order buyers on the exhibit, they are all traders, that is, the figures represent trading accounts. No order buying on commission is shown (T. 567). I could not tell by looking at Government Exhibit No. 122 how much resale yardage was paid by these various firms, numbers 1 to 49, inclusive, it is possible they [fol. 1025] may have paid resale yardage on every head of livestock shown thereon. I did not go into that feature of the matter.

In the Government audit I have restated the books of respondent in the matter in which I wanted them. I have made my own allocation of them for every year and as nearly as possible the same allocations each year (T. 568).

JOHN J. BACHMANN, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

Qualifications

I am the same John J. Bachmann referred to on page 113 and succeeding pages of the printed abstract of record which is a part of the record in this proceeding (T. 569). I am still in charge of audits and accounts, Packers and Stockyards Division, Department of Agriculture, Bureau of Animal Industry, and have been continuously since the prior hearing. Since that time I have been in charge of examinations and testified in the Denver Stockyards rate case, Kansas City Stockyards rate case, National Stockyards, Omaha Stockyards, and supervised the preparation of the audit for contemplated hearings at the Sioux City Stockyards. I have been in charge of commission rate hear-

ings at Sioux City, Iowa; St. Joseph, Missouri; Kansas City, Missouri; (the first hearing and the rehearing) National Stockyards, Illinois; St. Paul, Minnesota, and am now in preparation for the hearing at Chicago which is entering its second phase. I have also been in charge of the investigation of the Seed Loan Division at Memphis, Tennessee, for the Department of Justice and the Secretary of [fol. 1026] Agriculture, and have worked with Haskins & Sells in preparing a system of accounts for the Refinance Corporation covering Seed Loans, that work covering the Washington headquarters office, the Minneapolis, St. Louis, and Dallas, Texas offices. I have been in general supervision of the work of my own division at the office at Washington (T. 570). By the second phase of the Chicago audit I mean we made a statistical study of about 110 firms at Chicago for a conference on the question of commission rates. No agreement was reached. There has been some lapse of time, and so it was decided that an examination would have to be made again covering the entire year of all of the commission firms and all of the order buyers at the Chicago market for the hearing. We are in the midst of that work at the present time.

I heard Mr. Bufkin describe the audit that has been made in the year 1932 of the books and records of the St. Joseph Stock Yards Company. I had general charge and supervision of that audit. In addition to the general charge and supervision and assisting Mr. Bufkin in the audit for the last three months of 1932 I have prepared a supplemental report setting forth the working capital and the adjustments which I think are necessary to set up the operating profit of the company for rate-making purposes (T. 571). This set-up is in tentative form, subject to final adjudication on the part of the Secretary. It is also tentative as far as I am concerned because I did not have an exact outline of what was going to be considered as used and useful by Mr. Christensen. I therefore followed in that respect mainly the Secretary's last order and made eliminations, not an exact computation, but a rough calculation based on the exclusions in that order. The tentativeness of my supplemental report is due to the matters just stated. I do [fols. 1027-1029] expect to set down principles which will govern the adjustments to be subsequently made (T. 572). The principles which will govern the adjustments and the

principles which have guided me in making this supplement and the conclusions and recommendations in this supplement constitute my mature judgment after considerable time spent in studying the facts contained in the Government audits and such other data which I had.

[fol. 1030] Income for Rate-Making Purposes

Page 2 of Government Exhibit No. 124 is headed "Income for the year 1931." I have used 1931 as a guide only. The calculations which are made for the adjustment of income to expense in my opinion should be made for all of the years 1927 to 1932, inclusive, following the principles which will be set forth for 1931. By reference to page 2 it will be seen that there is one addition to the income as taken from the audit, Government Exhibit No. 121-A. That is the same item that was discussed (T. 579) at the previous hearing. The principles have not changed with respect to that item since that time. The items shown under "Exclude," should be eliminated on the basis of Mr. Christensen's report. I did not have Mr. Christensen's ideas in their entirety at the time this calculation was made and could not make it in complete and final form to reconcile with Mr. Christensen's recommendations. There is one exception to that in the eliminations and that is the amount of interest income. The reason for eliminating that has been stated at the time of the prior hearing, and the principles governing that have not changed. Page 4 of Government Exhibit No. 124 supports those eliminations in part covering yard leases and rentals of outside stockyard industries. The eliminations for all other years are to be made in accordance with the final determination of what is used and useful. The last item, "Yardage on Trading Transactions," was inserted just to call attention to the fact that (T. 580) the Secretary may in his final decision include yardage on trading transactions in some way or other. That is to be adjusted by way of addition to income if the final decision is to include such yardage (T. 581). There [fols. 1031 & 1032] is in the record the amount of total resales on which respondent collected revenue. I do not know of any figures in the record which show the resales made by traders on this market as a whole. There is not shown the amount of resales made by traders on this market upon which half yardage was not paid.

[fols. 1033 & 1034] Taxes

The next item is taxes. There is included in Government Exhibit No. 124 a detail of the taxes which have been eliminated and the taxes which are paid by the company. Statement No. 7 of Government Exhibit No. 121-A shows the legal descriptions of the properties on which taxes have been paid. These are statements 5, 6 and 7 from pages 359 to 375 inclusive. Further details with respect to the tax account are on pages 178 to 180 of Government Exhibit No. 121-A. The Company pays State and county taxes on its real estate (T. 586), a franchise tax, city tax, and real estate and personal property, State income tax, and Federal income tax. For the future the Federal income tax should be calculated on the basis of 13¾ per cent, which is the new law, taking into consideration, of course, such taxable income and allowable deductions which are to be finally included in the fair income and expenses for rate purposes. The State income tax is to be calculated on the basis of the State of Missouri taking into consideration the same fair income and expenses (T. 587). The eliminations which should be made in State, county and city taxes are to be made in the light of the property not used and useful as finally determined. Franchise taxes are paid on the basis of 50 cents per thousand on all the assets, and is shown in that balance sheet of the transcript (T. 588) the company taking the fixed assets at sound value. Any adjustments that are made on that amount must be made in the light of the assets which are to be allowed in the rate base. Taxes on properties which are not used and useful should not be included in the fair and reasonable expenses.

[fol. 1035] Repairs

There is no particular comment necessary with respect to any items from there on down to repairs of yard structures which is six items from the bottom of the page. Page 256 of Government Exhibit No. 121-A shows that in 1928 the Company charged as repairs—replacements of the roof of the hog yards in the amount of $4,445.93 and the roof of the sheep shed in the amount of $3,232.43. Those were charged as current repairs rather than against the depreciation reserve. Those were the only two that particularly came to my notice. I cite them as examples (T. 591). I

know of no item which can be designated strictly as a repair under the definition of that word which is not a replacement except one and that is welding. All other items that came to my mind are susceptible to the definition of replacements rather than repairs. I have made rather a thorough study of that and have gone so far as to look up the definition of both words in standard dictionaries of all kinds and find the term "repairs" includes replacements. If restricted to the exact definition of repairs there are few items which come under its comprehension. Accountants sometimes seek to draw a distinction between repairs and replacements. They set up two arbitrary rules. One is that the expenditure, if it has a life of more than one year, should not be classified as a repair. The second is that there is an arbitrary level set under which items are classified as repairs, and over which items are classified as replacements. That level may be $25.00, $50.00 or $100.00, wherever experience shows that items as a general rule are minor in nature or major in nature (T. 592). There is no practical benefit to the management of the property or the keeping of the accounts of the company that arise from setting up these arbitrary rules to distinguish repairs from replacements except that from an accounting viewpoint and the fact viewpoint such a distinction must or at least should be made. However, all those items can be [fol. 1036] classified under a general heading of maintenance of plant. In respect to accountancy for rate determination I am of the opinion that a sum should be allowed for the maintenance of the plant no matter how classified, whether repairs, replacements or depreciation. Whatever comes under the general heading of maintenance of the plant should be allowed for all items together. That eliminates the necessity of having to determine what constitutes repairs and what constitutes replacements.

The next item is repairs of outside property. The inclusion there represents repairs to the Transit House. That necessarily will follow the final determination of whether or not the Transit House should be included (T. 593). That item is $781.91. The details of that account are to be found on pages 272 and 273 of Government Exhibit No. 121-A. All expenses and income of the Transit House, in so far as it was possible to do so, have been segregated. The income will be found under the rent item. The expenses will be found under depreciation, insurance, taxes and repairs.

The next item is the repairs of feeding facilities. That elimination is to be made on the basis of the final determination of used and useful property. The same comment applies to the item "Miscellaneous outside real estate expenses," $2,514.54 (T. 594), and to the next item "Casualty Insurance on Outside Real Estate," of $36.94. Whatever is done with any of that property will govern as to whether it should be included or excluded. Bad debts have been included here because they are not in the strict sense of the word bad debts, but are adjustments of income which have been set up on the books as accounts receivable. They were not finally received, and it is in the nature of an adjustment in that account receivable. The same applies to bad debt income collections on items of that kind made subsequent to the time that the item was written off on the books.

[fol. 1037] The bond issue expense in my opinion is a part of the cost of getting money, and as such is a part of the return and should be handled in the same way that the discount on bonds is handled. It should not be considered as a fair and reasonable expense for rate-making purposes, but should be considered as a part of the rate of return (T. 595).

GOVERNMENT EXHIBIT No. 124

Below are pages 2, 3 and 4 of Government Exhibit No. 124:

St. Joseph Stock Yards Company

Income—Year 1931

	Total	Additions	Include	Exclude
Yardage	463,326.00		463,326.00	
Gross Sales—Hay	88,297.77		88,297.77	
—Corn	165,034.47		165,034.47	
—Oats	1,993.68		1,993.68	
—Bedding	10,432.54		10,432.54	
—Milled Feed	24,442.42		24,442.42	
Hog Pen Bedding	2,755.65		2,755.65	
Milling Feed Revenue	9,385.63		9,385.63	
Loading & Unloading	28,422.00		28,422.00	
Exchange Bldg.—Off. Rent	39,641.05		39,641.05	
Exchange Bldg.—Garage Rent	3,262.36		3,262.36	
Exchange Bldg.—Miscl. Revenue	92.27		92.27	
Weighing Cars	5,238.27		5,238.27	
Stock Car Service	293.25		293.25	
Cleaning, Sanding & Disinfecting	144.58		144.58	
Manure Sales	158.47		158.47	
Car Partition, etc.	423.98		423.98	
Immunization Plant Revenue	3,664.15		3,664.15	
Truck Washing	732.65		732.65	

St. Joseph Stock Yards Company—Continued

Income—Year 1931—Continued

	Total	Additions	Include	Exclude
Yard Truck Revenue	.....		.....	
Tractor & Trailer	21.75		21.75	
Company Barn	.....		.....	
Estrays	426.80		426.80	
Miscellaneous Income	420.02		420.02	
Yard Leases & Rentals	1,904.69		1,804.73	99.96
Shoes (Employees) Sold	.....		.....	.....
Feeding Facility Yardage	7,376.35			7,376.35
Rental of Feeding Facilities	789.47			789.47
Rental Tracks & Rt. of Way	.....			.....
Rental Outside Real Estate Ind	775.00			775.00
Rental Outside Stock Yards Ind	2,970.00		1,290.00	1,680.00
Rental Outside Houses	97.58			97.58
Rental Outside Ground	1,329.22			1,329.22
Dipping Income	14.10		14.10	
Water, Electricity & Heat	2,686.99		2,686.99	
Interest	7,436.99			7,436.99
Bad Debts	.06		.06	
Sales Pavilion Income	.....		.....	.....
Dividends, Casualty Insurance		5,500.00	5,500.00	
Yarding on Trading Transactions		.....	.....	
	873,990.21	5,500.00	859,905.64	19,584.57

[fol. 1038] St. Joseph Stock Yards Company

Expenses

Year—1931

	Total	Additions	Include	Exclude
Office & Management Payroll	25,155.88		25,155.88	
Miscl. Adm. Expense	6,425.82		140.48	6,285.34
Officers' Travel & Entertainment	547.27		547.27	
Legal & Collection	1,608.95		1,608.95	
Pensions	2,525.00		2,525.00	
Donations & Subscriptions	2,595.11		317.16	2,277.95
Taxes	57,663.51		51,028.45	6,635.06
Depreciation	123,066.12		50,000.00	73,066.12
Insurance	14,430.61		12,980.45	1,450.16
Valuation Hearing	3,479.43			3,479.43
Bond Interest	48,517.19			48,517.19
Bond Discount	6,241.24			6,241.24
Office Rent	1,782.00		1,782.00	
Office Supplies	709.88		709.88	
Office Expense	122.23		122.23	
Office Postage	242.62		242.62	
Telephone & Telegraph	692.82		692.82	
Store House Expense	1,232.72		1,232.72	
Engineering	6.83		6.83	
Fiscal Agents, Registrars, etc.	314.06		314.06	
Yard Pay Roll	132,239.82		132,239.82	
Yard Cleaning & Disinfecting	20,123.07		20,123.07	
Yard Current	4,342.24		4,342.24	
Yard Casualty Insurance	4,147.50		4,147.50	
Estrays	852.50		852.50	
Water, Elec. & Heat	13,448.91		13,448.91	

St. Joseph Stock Yards Company—Continued

Expenses—Continued

Year—1931—Continued

	Total	Additions	Include	Exclude
Company Barn	1,891.79		1,891.79	
Yard Truck	247.33		247.33	
Cost of Hay Sold	41,034.99		41,034.99	
Cost of Corn Sold	106,480.78		106,480.78	
Cost of Oats Sold	1,149.67		1,149.67	
Cost of Bedding Sold	3,042.44		3,042.44	
Cost of Milled Feed Sold	20,877.12		20,877.12	
Cost of Hog Pen Bedding	187.21		187.21	
Milling Feed Expense	1,905.76		1,905.76	
Grain Elevator	1,073.95		1,073.95	
Weighing	3,812.83		3,812.83	
Dipping	42.05		42.05	
Car Partitions, etc.	253.29		253.29	
Immunization Plant	870.71		870.71	
Repairs Yard Structures	14,457.73		14,457.73	
Repairs Water Lines	2,091.28		2,091.28	
Repairs Sewers	1,393.55		1,393.55	
Repairs Paving	1,371.98		1,371.98	
Repairs Hay Barns	188.20		188.20	
Repairs Equipment	652.60		652.60	
Repairs Outside Property	1,648.11		781.91	866.20
Repairs Exchange Bldg.	2,493.85		2,493.85	
Repairs Feeding Facilities	608.04			608.04
Payroll—Traffic Dept.	7,371.00		7,371.00	
Solicitors' Salaries—Traffic Dept.	13,600.86		13,600.86	
Casualty Insurance—Traffic Dept.	2.80		2.80	
Postage— Traffic Dept.	361.82		361.82	
Printing & Stationery—Traffic Dept.	301.54		301.54	
Telephone & Telegraph—Traffic Dept.	1,832.51		1,832.51	
Miscellaneous—Traffic Dept.	222.85		222.85	
Solicitors' Expenses—Traffic Dept.	11,517.16		11,517.16	

[fol. 1039]

	Total	Additions	Include	Exclude
Advertising	3,583.32		3,583.32	
Stock Show	3,069.67		3,069.67	
Exchange Bldg., Labor	8,800.27		8,800.27	
Exchange Bldg., Casualty Ins.	287.97		287.97	
Exchange Bldg., Elec., Water, Heat	4,946.03		4,946.03	
Exchange Bldg., Supplies	1,775.92		1,775.92	
Truck Washing Expense	231.64		231.64	
Sale Pavilion Expense	.....		.....	
Miscl. O. R. E. Expense	2,514.54			2,514.54
Casualty Insurance, O. R. E.	36.94			36.94
Tractor & Trailer Expense	745.97		745.97	
Audit Expense	651.00		651.00	
Repairs—Furn. & Fixtures	.....		.....	
Bad Debts	31.29		31.29	
Cost of Shoes Sold (Employees)	.....		.....	
Bank Exchange	.....		.....	
Manure Sales Expense	30.25		30.25	
Bond Issue Expense	1,000.00			1,000.00
Interest	.....		.....	.....
	$743,203.94		$590,225.73	$152,978.21

Depreciation Reserve

Depreciation is divisible into two parts. The first is actual depreciation which results in wear, tear, rust, rot, decay, inadequancy, and obsolescence, and the accrual of that actual depreciation in the asset itself to the extent of 100 per cent when it is retired. The second part of the question of depreciation is the provision which is made under managerial policy, and (T. 595) on the books of the company, and the accrual of this provision on the books to meet the actual depreciation which is being accrued in the asset.

To discuss first the actual depreciation: actual depreciation is intimately related with repairs and replacements, that is, the policy of the company with respect to a normal or abnormal expenditure for repairs or the charging of replacements to repairs has a vital effect upon the accrual of actual depreciation. Actual depreciation does not accrue steadily in this sense, that it is of an equal amount in each year. It may be heavy in some years due to climatic conditions. It may be less in other years, due to a greater expenditure for repairs, due to major replacements in part, and for other reasons.

[fol. 1040] Replacements and repairs may maintain some assets for an indefinite period of life, whereas, other assets cannot be maintained in that way, although their life can be extended far in excess of the average life of assets of a similar kind.

Now, actual accrued depreciation can be determined as to amount in two ways: by the observation of an individual qualified to determine how much it is during the life of the asset, and by the observation of an ordinary layman when it has accrued to 100 per cent; that is, the ordinary layman can see when a building is being retired or a structure is being retired, and, in that way, know that the asset is 100 per cent actually depreciated.

Now, to study the actual depreciation of the St. Joseph Stock Yards Company, from the viewpoint of how much has accrued in the assets which (T. 596) are in existence at the time an appraisal has been made: I find that in 1922 an appraisal was made by the American Appraisal Company for the St. Joseph Stock Yards. According to this appraisal, the actual accrued depreciа-

tion which was determined apparently by observation was $621,171.27. This, as stated, took place in 1922. In 1929, there were two appraisals made, one by Mr. Henrici and the other apparently by Mr. Kosters. In 1932, there were again two appraisals made by the same individuals, as far as I know. Taking Mr. Henrici's two appraisals, the actual depreciation determined by observation, which had accrued in all the assets existing at that time, was $641,464.

In 1932, the amount is $648,631. For Mr. Kosters, in 1929, the amount was $535,907, and, in 1932, was $337,437.

Now, the amount of depreciation apparently that has accrued, if we take the American Appraisal Company and Mr. Henrici, is about $20,000 between 1922 and 1929, and [fol. 1041] about $27,000 between 1922 and 1932. It would equal, on an average, somewhere between $2,500 and $3,000 a year.

If we take and compare the American Appraisal Company with Mr. Kosters' depreciation determined by observation, apparently the condition per cent has been bettered in both of the periods, from 1922 to 1929, and from 1922 to 1932. The amount of that betterment in condition (T. 597) from 1922 to 1929 is about $85,000 and from 1922 to 1932 is about $285,000.

Now, in addition to the depreciation actual, which has accrued in the assets, there ought, of course, to be taken into consideration the actual history of the company with respect to retirements which have been made during the life of the assets. In other words, the history of those assets should be considered. The actual retirements which have been made from the asset accounts of the company from 1916 to 1932 were $44,797.70. The details of these retirements will be found on pages 384 to 387 of Government Exhibit No. 121-A. From 1922 to 1932, there were retired from the stockyards buildings and improvement account $55,682.23. In the same period of time, there was retired from the buildings outside account, $105,518.70; and the Exchange Building and garage, $6,738.

The stockyards buildings and improvement account retirements will be found on pages 25, 26, 27 and 28 of Government Exhibit No. 121-A. The retirements on buildings outside real estate will be found on pages 30 to 32. On the Exchange Building and garage, they will be found on

page 33. And the retirements on equipment, totaling for that period $33,552.17, will be found on pages 35 to 49.

The total retirements made from the asset accounts for [fol. 1042] the years 1916 to 1932 were $239,550.80. That covers all property whether used and useful or not used and useful. The average for a year would be about $15,000. Now, included in those retirements are some fire loss retirements. They total, as best I can determine them, about $25,000. If we eliminate from the total retirements made fire loss retirements and the retirements on properties not used and not useful, the amount will decrease to about $10,000,—between $7,000 and $10,000, for such assets which are used and useful. Now, in my opinion, the retirements, plus the depreciation accrued in the assets which are in existence and which depreciation accrual is determined by observation, is the guide which should be in the minds of those who are setting the provision for depreciation to be made on the books of the company. In other words, the provision for depreciation should be kept in line with the actual depreciation that is being suffered and the retirements which are being made.

Now, to discuss the second phase of depreciation, that is, the provision which is to be made under managerial policy and on the books to meet this actual depreciation: in order to provide for depreciation, we must have three things: a base, a rate and a method of accrual. There is no question as to what the base should be for rate making purposes. It is reproduction new value, and that is the base which has been used in my calculations. I use reproduction new value as a synonym of cost of reproduction new (T. 599).

There have been other bases used for depreciation, but not, in my opinion, for rate making purposes so much, although the court, in the Baltimore Street Railway case, apparently indicated that the sound value of the assets would be a proper base. However, if that is the case, we would have to use a remaining life table, that is, the remaining life in the assets for which the sound value has [fol. 1043] been determined. Also, the Interstate Commerce Commission uses a cost base. They use straight line on cost. I don't think that conforms to the ruling of the Supreme Court. I mean actual cost as best as they can determine it as distinguished from cost of reproduction.

That is the way I read the latest decision made by them and I think written by Commissioner Eastman.

The rate to be applied to that base is determined from the life tables. That is, if it is determined that an asset has a life of 20 years, and we wish to depreciate or to allow a depreciation reserve for the full value of the asset, or 100 per cent, the rate to be applied to the base would be 5 per cent. Now, these life tables, as stated by Mr. Henrici, are based on general experience. They are in the nature of a general proposition and a general proposition is, of course, always subject to correction for specific experience (T. 600). A general table may not be applicable, as a whole, to a particular company, unless the history and the experience of that company shows that the general experience is reconcilable to the specific experience of the company. In other words, if anything should be modified, it is the life tables that should be modified in the light of the actual experience. The method of accrual may be straight line, sinking fund, or about three or four other methods which are used but which will not be discussed here. I will discuss here only the straight line, the sinking fund and the retirement methods.

Comparison of Retirement and Straight Line Methods

The retirement method is sometimes used as a method of accrual. Now, the straight line method, using Mr. Henrici's calculations, provides an amount for depreciation annually of $113,492 on all property, whether used and useful or not used and not useful. The details for that are [fol. 1044] to be found in Government Exhibit No. 124. The amounts which have been provided for an allowance of depreciation on the books of the company are shown in Government Exhibit No. 124 under the heading of "Provision for Depreciation Reserve Account Per Books Years 1915 to 1932 (T. 601)".

Reference to that page will show that there has been provided for depreciation allowance on the books of the company from 1915 to 1932 by a charge against operations, $1,515,408.70. At the time the appraisal was made in 1922, there was provided against appreciation an amount of $231,223.52, a total provision in those years of $1,846,-632.22. Particular attention is directed to the amounts which have been provided annually since 1923. All of

those amounts run about from 120 to 130 thousand dollars a year. The company on the books uses the straight line on book value apparently. That book value, of course, since 1922, has been the appraisal value as determined by the American Appraisal Company. If we compare the straight line allowance as determined by Mr. Henrici, or as set up on the books of the company, with the actual experience of the company with respect to actually accruing depreciation and replacements, we find that the amount provided for on the books cannot in any way even remotely be reconciled with the actual experience. In other words, the amount provided for by the straight line method on reproduction new or book value is far in excess of what the actual experience shows the requirements to be (T. 602). I am speaking now of the depreciation provided by the company on the books and also of the depreciation which would be provided by the straight line method using Mr. Henrici's estimates of life; in other words, my opinion is that the straight line method of making provision for the actual depreciation is out of the question. It is far [fol. 1045] in excess of what the company needs to maintain its plant when we consider the retirements and replacements and repair policy of the company. That applies both to the straight line method employed by the stockyard and the straight line method which would be employed in Mr. Henrici's estimate.

I don't particularly criticise the life that is used there or the amounts which are determined as a result of that life for this reason, that those tables are general experience and in so far as they are general experience they are a starting point, but they are to be tested in the light of the specific experience of the company and to be modified accordingly.

To give examples of why I feel that the straight line method is not reconcilable as to the amount provided for depreciation by it with the actual needs, if we take first the pens, fences, runways, and other yard structures, we will find that they total in amount of over a million dollars. During the period 1916 to 1932, the actual retirements have been on this particular class of assets about $40,000. The condition per cent has not (T. 603) changed very much during the past ten years. However, during that time there has been provided an allowance for depreciation in excess

of $600,000. The Exchange Building is being depreciated on the books over a period of about 30 years. It was built and opened in 1898. If the life table used by the company were correct, then this building should have been retired five years ago. The provision made on the books does not give consideration in its accrual to the income which may be realized from the installment provision set aside each year for depreciation. The condition per cent of the Exchange Building has not changed appreciably in the last ten years. The same comment made with respect to the Exchange Building can readily be applied to the Transit [fol. 1046] House and the Exchange Annex. Also to the sewer mains and the water mains. In other words, the provision which has been made for depreciation on books of the company nowhere reconciles in any degree with the actual retirements or the actual changes in condition per cent. Of course, it is not expected that it will, that the provision will keep pace at all times with the actual accruing depreciation. In general practice, the provision is made for adding amounts similar in each year, whereas the actual depreciation varies from year to year. However, over a period of time the two should be harmonized at least in some measure. The condition per cent in the appraisals as stated in composite has not changed very much during the period of ten years. However, during the same period of time, there has been made provision for depreciation on the books of the company to the extent of about one and a quarter million dollars without considering (T. 604) income on such provision. Government Exhibit No. 124 shows the percentage of provision for depreciation in comparison with the values as shown on the books for the specific assets. Stockyards buildings, for instance, are depreciated on the books to the extent of 65 per cent; buildings, exchange and outside, to the extent of 53.4 per cent; equipment to the extent of 85 per cent; and the total of all assets to the extent of 66.5 per cent. I wish to make a correction there; the last paragraph on the page headed "Provision for depreciation reserve account," instead of being equipment should be all assets.

Sinking Fund Method

The straight line method, in my opinion, being out of the question for this particular purpose, there appears to be

left only the sinking fund method or the method of actual [fol. 1047] retirements plus the actual accrual of depreciation as determined by observation. To discuss first the sinking fund method, it has one advantage, that is, it does come closer to the facts than any method except the actual retirement method. It gives consideration to the fact that the company gets the money provided for by a depreciation allowance on an installment basis before the asset is actually retired, and invests this money and secures on it a return. Unless this earning, that is, the earning on the installment payment for depreciation allowance is given consideration, an otherwise fair rate of return becomes an abnormal or an unfair rate of return. This is demonstrated by two examples set up in table form in Government Exhibit 124, being headed "Comparison of straight line and sinking fund method of depreciation." The (T. 605) first example takes an asset which has not been appraised during the course of its life, and the second takes an example which has been appraised during the course of its life. These examples show that giving consideration to the earnings which are made on a sinking fund provision, adding that earning to a fair rate of return on a rate base which does not change, and the fair rate of return becomes abnormal. I have assumed for purposes of this example a fair rate of return of 7 per cent with the earnings on the sinking fund installment, that 7 per cent return becomes a return slightly greater than 11 per cent. In other words, to avoid such a situation, consideration must be given to the fact that depreciation allowance is made on an installment basis before the asset has reached a depreciated condition per cent of 100, that this money is invested and that a return on it is gained by the company. I have made a calculation on a 5 per cent sinking fund method of depreciation applied to the straight line method amount determined by Mr. Henrici which is shown in Government [fol. 1048] Exhibit No. 124. For purposes of that calculation I have eliminated the properties not used and useful in so far as I knew them. The result is an allowance of $50,000 a year. Now, I feel that a computation made in accordance with the sinking fund method is quite liberal, and I would say that this $50,000 should represent the maximum allowance which should be made. The allowance which should be made by the Secretary, in my opinion,

should be somewhere between the amount determined on a retirement basis, about $10,000 being (T. 606) the minimum and a sinking fund basis, $50,000 being the maximum. I think that is all (T. 607). I would say pens and fences would come under the classification of assets which are maintained indefinitely by repairs, at least by repairs as classified on the books of this company, when we consider that the pens and fences of this company were in existence previous to 1916, and I include in that yard structures and that the amount of them totalled over a million dollars, and I think about a million and a half, and that during that period of years, and I have only the history from 1916 to 1932, there was retired only about $40,000 of asset value of that nature, and, if we study those retirements, we find that they are due, in some measure at least, to, I would say, inadequacy and obsolescence; it is evident that that particular asset does not come to the end of its life because of wear and tear, but it is the abnormal depreciation factor of inadequacy and obsolescence. I used the term "abnormal" in a restricted sense, which brings those retirements onto the books of the company.

It seems to me in the light of those facts that repairs maintain the assets in about its same condition per cent and that that could be done for an indefinite period of time. Now take an asset which will come to the end of its life, no matter how much is spent on it for repairs. In my opin- [fol. 1049] ion, the Exchange Building (T. 608) is such an asset. In the life of an asset of that kind, there are partial replacements made from time to time. For instance, the repair of a skylight or the replacement of it in part, the replacement of, for instance, the elevators. They would have the tendency of extending its life, and, in my opinion, sooner or later, that asset is going to come to the end of its existence, unless it is replaced in a major proportion, that is, substantially rebuilt. Of course, under a situation of that kind, its life would be continued perceptibly. However, if such a major replacement were not made, it would, in my opinion, come to the end of its life at some definite future time. I have in mind with respect to the Exchange Building, the Exchange Building at National Stock Yards. That building is about 70 years old; it has been added to and it has been remodeled in part. However, it looks to me as if that building will have to be substantially rebuilt

or replaced with a new one at some time in the future and not too far distant future. If the life of a building is estimated for a certain number of years and during that time there is a major replacement, like a new roof, it has the tendency to extend the life of the building beyond the original estimate, but, of course, the percentage of life increase would be very difficult to determine (T. 609). The Exchange Building was erected in 1897 or 1898. The company depreciated it on its books on the basis of a life of about thirty years. The effect of that would be that it came to the end of that life five years ago. In effect, that means that the company was fully reimbursed through the depreciation allowance for the cost of that building as set up on its books. I do not know, but they may not have had sufficient income in the early years to provide for depreciation reserve and did not make it up from possible excess earn- [fol. 1050] ings subsequent to that time. If the provision was made each year for that period of time at that rate then the asset was completely provided for by way of an allowance in thirty years. I do not base any of my recommendations upon the thought that the company has taken too much depreciation in the past, and should be penalized in the future. The purpose of using or considering the depreciation as set up on the books of the company is to determine the history of it because the history of it in the past is, in my opinion, the best guide as to the allowance which should be made in the future (T. 610).

I made no test as to what part of the lump allowance that is set up on the books annually was directly applicable to the Exchange Building. I should state that this is the way that the depreciation allowance was handled on the books of the company. We have no records available for our examination prior to 1916 and I do not know whether the company made provision for depreciation allowance previous to that time. Apparently, if they did, it was eliminated in some way or other, because the company began anew to set up an allowance for depreciation in 1915, as shown in Government Exhibit No. 124. From 1915 to 1922, there was an allowance set up which ran between $39,000 and $59,000. How that was determined, I do not know.

The company, as I say, set up a depreciation allowance in lump sum included in which I assume is the Exchange Building. At that time, in 1922, the appraisal was made

by the American Appraisal Company, and, from then on, the depreciation apparently was calculated on a straight line basis on the appraised value set up on the books of the company. Now, we know what the depreciation rate on the Exchange Building was approximately from 1922 to 1932. [fol. 1051] What it was previous to 1922 and what amount was provided previous to that time back to 1916, I do not know at this time (T. 611).

I do not know if 1922 was the first year that this thirty-year life which I talked about is evidenced on the books. That is, I do not have the information as to what rate was charged previous to that time. Apparently, that was the time when they began using the thirty-year life on the appraised value of the American Appraisal Company. What rate was used previous to that time I do not know. In 1922, apparently the reproduction new value was used. From the examination of the history which I have made, both from this audit and the records of the Division, I believe this property began to operate about 1893 or 1894 and that some of the assets were in existence in 1916. I know, of course, that the Exchange Building, the Transit House, and Annex were in existence at that time (T. 612). It is very difficult to determine whether any of the assets of the company had been entirely depreciated for the reason that the company set up its allowance for depreciation on a lump sum basis and it is a very difficult matter to take that lump sum and allocate it to property specifically (T. 613).

Some companies keep right on depreciating the asset-, as a whole, no matter if some particular asset has been provided for to the extent of 100 per cent. That is, of course not correct, because the allowance should be segregated by properties, and when provision has been made for a particular property to the extent of 100 per cent, allowance should be stopped on that particular property. In this company, we do not know what rates were used prior to 1922. However, if the rates which have been applied to the Exchange Building and to the pens and fences from 1922 to 1932 had been in effect for the life of those assets, undoubtedly the assets would have been provided for by way [fol. 1052] of an allowance for depreciation to the extent of 100 per cent. From that time on there should be no further allowance for depreciation. It is quite a customary practice in commercial accounting and engineering and

managerial fields that, when an asset has been fully depreciated in that way, the asset is reappraised and set up again on the books and depreciation commenced again (T. 614). The difference is usually closed into the surplus account, sometimes into the earned surplus, sometimes into the capital surplus, and sometimes into the appraised surplus. That sometimes becomes the basis or evidence of cash or stock.

When I spoke about two amounts, one $10,000, based on the retirement or actual method, and $50,000, based on the reduction of the straight line method to a sinking fund basis, those methods were independent of each other.

I do not think it would be a wise investment if they did not contemplate that it would produce an income. If it were necessary to make such an addition to the plant and they tried to secure the money (T. 615) from outside sources, it would have to be productive. There is no reason why that viewpoint should change if they took money which has been provided for by an allowance for depreciation and invest that in their plant. It does or is intended and expected to produce an income.

If this money is invested in an extension or a remodeling of the plant, it would have the effect of saving the company the cost of borrowing money for that purpose from outside sources. It could be used for a betterment, if they did not have the money of their own and money provided for by an allowance for depreciation. However, for remodeling to the extent that the remodeling is in effect a replacement, that is what the allowance is for. If the remodeling is in [fols. 1053 & 1054] the nature of a betterment, the portion that is a betterment over the actual replacement should be considered as being provided for by capital or moneys other than that provided for by the allowance for depreciation (T. 616).

I wish to direct attention to the last page of Government Exhibit No. 124, which is an analysis of the surplus in summary form for the years 1916 to 1932. It reflects the operating profits, the adjustment and appraisal, the dividends which have been paid and the miscellaneous gains and losses from sale or retirement of both depreciable and non-depreciable assets and other risk losses and gains.

In accountancy the surplus account is the difference between the total asset value on one side and the liabilities

to outsiders and to owners on the other side. In other words, if we had an asset value of $150,000, that value is owned by creditors to the extent that they have furnished current capital or fixed capital, for instance, bonds, and by the vested stockholders. For instance, in this example, we will say that the liabilities to creditors is $50,000, and the stock is $50,000, there remains a value of $50,000, after deducting these two liabilities from the $150,000. That remainder is the surplus. That varies from time to time according to the fortunes of the company (T. 617).

Cross-examination:

[fol. 1055] Feedlots

The income from the sixth item, designated as the O'Connell feedlot, would be included on page 2 of Government Exhibit No. 124 opposite the description "Feeding Facilities Yardage." For those years in which such yardage was charged or collected as a yardage charge it would appear in the audit opposite the same entry. For the years in which it was not collected as a yardage charge but as a rental it would be shown as a rental income.

Anchor Serum Company

The income received from the Anchor Serum Company would consist of milling feed revenue which comes from an [fols. 1056 & 1057] arrangement with the Anchor Serum Company whereby respondent grinds feed and makes a slight revenue on the grinding of that feed (T. 634), and a rental is shown in Schedule 31 of Government Exhibit No. 121 on the basis of $40 per month. This latter item is included on page 2 of Government Exhibit No. 124 in the item "Rental Outside Stockyards Industries, $2,970." A rental in a like amount would be included for other periods in Government Exhibits Nos. 121-A, B, and C. As long as the milling feed arrangement appeared, a like item would appear for previous years (T. 635).

I do not know the practice of respondent as to collecting yardage under Item 12-A, for feeding of livestock by the O'Connell Feeding Company, and that portion of Item 7 of Government Exhibit No. 107-A designated "Sublet to O'Connell Feeding Company." If yardage is collected for

the use of the feeding facilities it would be included on page 2 of Government Exhibit No. 124 under the heading "Feeding Facilities Yardage" (T. 636).

[fols. 1058–1061] Feedlots

In the years in which a yardage fee was collected the income from Item 24 of Government Exhibit No. 107-A would correspond to my previous statement about yardage received under Item 12-A of respondent's tariff for the use of feedlot facilities, and for those years in which it was on the basis of rental it would be shown as rental.

[fol. 1062] Allocation of Maintenance, Repairs and Other Expenses

The amount of expense which is allocated to the specific item of railroad loading and unloading is not set up in Government Exhibit Nos. 121-A, B, and C, and 124 (T. 655). From a cost-accounting viewpoint in the way allocations are made, allocations can be made of at least some of the expense items in this service or to the use of these f[illegible]ilities. It would not be made from the exhibits which have been enumerated, Government Exhibit Nos. 121-A, B, and C, and 124 and it could not be done from the books alone. The working sheets used by Mr. Bufkin would furnish in-[fol. 1063] formation which would be of assistance in making an allocation on a cost-accounting basis. Possibly all of them would be of assistance. In cost accounting one gets into the question of functional or departmental costs and, of course, all expenses are allocated to functions or to departments. Necessarily allocations have to be made on a cost-accounting basis which to the ordinary individual would appear to be arbitrary. Such bases may be the direct labor hours; for instance, the overhead allocation may be made of the total direct hours of individuals engaged in loading and unloading as compared to the total labor hours of all functions or services (T. 656). It would appear to be possibly an arbitrary basis. However, as a practical proposition it has been very frequently used and has been found fairly satisfactory. There are at least a half a dozen various bases which are generally used in cost accounting. It would require, however, some study and time to determine a basis for the distribution or allocation

of all of the various classes of expenses that would come under the heading of overhead to allocate them to the particular service or function. It would require a considerable length of time and study. To a certain degree it could be done to Government Exhibit Nos. 121-A, B, and C and 124 and the work sheets. The auditors that were engaged on this job made a rather complete analysis of the payroll for Mr. Henrici. I do not know exactly what information those work sheets embody as I have not made a particular examination of them. I do not know whether these documents show the number of labor hours which have been used up in the performance of railroad loading and unloading (T. 657). I shall search the work sheets to determine if they show the number of labor hours which have been used in the performance of railroad loading and unloading [fols. 1064–1072] and state on the record which of the documents so show. If nothing more is heard from me on the subject, it is proper to assume that the documents do not so show.

That study for Mr. Henrici, to which I referred, is contained on pages 343 to 347 of Government Exhibit No. 121-A. It does not show specifically the number of hours used in railroad loading and unloading. That study shows the pay paid to the persons enumerated on those sheets by function (T. 658), but there is no function designated "Railroad Loading and Unloading." There is nothing in my audit that shows the clerical overhead cost of railroad loading and unloading. In order to accurately determine the number of hours used in railroad loading and unloading it would not be necessary to make a time study. In the absence of a time study it would be necessary to take every individual on the payroll and discuss with him and go over his duties and, from such a study, arrive at a base for the distribution of his salary. A time study would be a method but none has been made. This other method has not been followed through (T. 659). Repairs to these particular railroad loading and unloading facilities have not been segregated in my audit. This is also true of electric lighting expense. In order to determine how much electric lighting is used in connection with these facilities, a study would have to be made of the kilowatt hour or candle power light as distributed over the yard and for the hours which they are burning. No such study has been made. An

analysis would have to be made of the repairs which would involve taking all job tickets of respondent and finding out where the work was done and what was the nature of it. Mr. Bufkin made an analysis of repairs but I do not believe his study went to that extent. Mr. Bufkin advised me that it could not be done (T. 660).

[fol. 1073] H. E. BUFKIN, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Direct examination:

Income for Rate Making Purposes

Allocation of Maintenance, Repairs and Other Expenses

Referring to my statement to Mr. Bachmann regarding an analysis of the repair account in order to determine the amount of repairs on railroad loading and unloading facilities, I stated that I would not attempt to go into repairs to break them down over the various facilities of the stockyards for the reason that it would have taken an indefinitely long time. An investigation could be made that would enable me to break down the repair account and allocate it to the various functions in the yards, but I have made no such investigation (T. 690). It would be impos- [fol. 1074] sible to make such a breakdown of repairs to loading and unloading facilities from the present work sheets. To break down the repairs for the entire yards is a very lengthy job. In fact some of the work orders covering the repairs on different jobs may not be defined sufficiently for me to get my information. The work orders in all instances do not cover just one facility (T. 691).

Cross-examination:

The payroll does not designate any labor for loading and unloading under that heading. There is nothing of record or in the work sheets which are not of record from which I could show the amount of labor performed in cleaning and maintaining the offices in the Exchange Building used by the Stock Yards Company, separately, as opposed to the

commission men's offices. The amount of labor expended in cleaning and maintaining hallways would not be shown nor the lobby. The total labor expended on the entire Exchange building only is shown. The same principle would apply to light and heat, it all being shown in one lump sum (T. 692). I did not reallocate any other items that have been broken down other than depreciation, insurance and taxes. None of these items have been broken down so as to determine the amount that is applicable to the loading and unloading docks. That would also be true as to portions of the Exchange Building. Insurance is a lump sum for the entire Exchange Building, and the same is true of taxes and depreciation (T. 693).

Redirect examination:

I could find nothing in the records to indicate that the labor employed in loading and unloading was employed exclusively for that purpose and not used for any other purpose.

[fols. 1075–1082] Recross-examination.

So far as I know such labor is not used exclusively for loading and unloading. The same man that loads and unloads also does other duties such as yarding and driving livestock.

Redirect examination:

So far as I know that is true in regard to the men who do repair work in the stockyards (T. 694).

JOHN J. BACHMANN, a witness formerly called by the Government and sworn, being recalled, testified in substance as follows:

Cross-examination:

[fol. 1083] Depreciation Reserve

In Government Exhibit No. 124 I made certain computations on the sinking fund method of setting up a depreciation reserve based on a 5 per cent return computed semi-annually. One method would be to buy a 5 per cent bond

believed to be sufficiently secure. If $1,000 were invested in a 5 per cent bond, a personal property tax of $1.25 per hundred would be paid (T. 715). County personal property tax is $2.03 per hundred, which would make personal property tax, city and county, $3.28. The franchise tax would be 50 cents per thousand, which would make a total tax of $3.33. The State income tax is 2 per cent on gross income, but the taxes mentioned would be a deduction. On the assumption made, out of the $5.00 return on a $100 bond, $3.33 would be subtracted from the $5.00 before attempting to compute the income tax (T. 716). 2 per cent on the remainder would be 3 or 4 cents. The Federal in-[fol. 1084] come tax would be about 20 or 21 cents. The total tax would be $3.33, plus 3, plus 21, or $3.57, which would be deducted from the $5.00, leaving a net return to the owner of that bond of $1.43. On page 15 of Government Exhibit No. 124 I have made a computation upon the basis of an asset worth $100,000. My compound interest sinking fund method is secured upon a 5 per cent basis to produce $100,000 at the end of the supposed life of that asset (T. 718). If the assumption is made that the net return to the purchaser of the security would be $1.43 per hundred instead of 5 per cent, that calculation would fall about two-thirds short at the end of the life of that particular $100,000 asset shown in the illustration. However, this example on page 14 was given for a comparison of the straight line and sinking fund methods and is based on the assumption that in addition to the fair rate of return, all reasonable expenses will be allowed and have been provided for, the same as my calculation on the depreciation allowance recommendation is based on the assumption that all necessary carrying expenses will be provided for in the reasonable expenses. Under the mathematical calculation which is made, it would fall short between 60 and 70 per cent (T. 719).

On page 12 I have made a somewhat similar computation based upon straight line depreciation and on a 5 per cent semi-annual sinking fund basis, as applied to the actual assets of respondent. Making the same assumption as to investments in a 5 per cent bond and assuming that expenses have not been provided for, the shortage would be possibly the same amount, approximately 60 to 70 per cent short of producing the cost of reproduction new over

the assumed life of the property. Those expenses are provided for in the particular expenses that are incurred in [fol. 1085] carrying a fund of that kind. If it is carried as a separate proposition, taxes is about the only item that I could think of (T. 720). There are possibly a few minor carrying charges, overhead, and so on, that might be allocated to the administration of a fund of this kind. I contemplate in my calculation that those carrying charges will be provided for. I have not in my calculations made any elimination for personal property taxes. I have stated that the franchise tax and income tax are to be allowed for all expenses and income considered reasonable and fair for rate making purposes, which in my opinion includes the necessary carrying charges if a sinking fund basis were adopted. In other words, I do not contemplate that the carrying charges will be a charge against the fund but will be carried in the reasonable expenses of the company for rate making purposes. The taxes paid to the county and state, the income tax, and the franchise tax, have not been adjusted by eliminating anything (T. 721). I have attempted in studying the history of respondent to determine where the money went. Of course, it is not possible to trace the exact dollar to find where it has gone, but it is my opinion that moneys which have been provided by the allowance of depreciation are in the main invested in the plant of the company. Some of them, in my opinion, may have been paid out by way of liquidating or other dividends. If the reserve is invested in the real property of respondent, it would not be subject to a personal property tax of $1.25 per hundred (T. 722), nor to a county personal property tax of $2.03 per hundred. That would equally apply to the state income tax of 2 per cent, and to the Federal income tax (T. 723).

Redirect examination:

I was called upon to assume that there would be a city tax of $1.25 per hundred which went to make up the $3.57 [fol. 1086] of taxes assumed in the questions asked me. That would be a tax to the City of St. Joseph. The St. Joseph Stock Yards Company is not located in the City of St. Joseph, as its office is in the Exchange Building, which is not in the city. The only personal property tax that I could find paid to the City of St. Joseph is indicated on

page 363 of Government Exhibit No. 121-A. It is personal property tax on the Transit House and the harness shop (T. 725). In my calculations for depreciation reserve on the sinking fund basis, I assumed that the payment of all reasonable expenses of the company are provided for elsewhere and based on my knowledge that it will cost, under ordinary circumstances, a sum of money to carry these investments by way of taxes. It is not necessary that those expenses be allowed in the sinking fund itself or be a charge against the sinking fund itself. They may be allowed in the reasonable expenses of the company. There is no argument, as far as I am concerned, that it does take money to carry those things, and I contemplate that that should be allowed, if this method of depreciation is adopted. That means that in ascertaining the reasonable cost of rendering the service as a basis for rates, taxes would be included in that reasonable cost. In addition to taxes and other things, there would be my recommendation for the sinking fund allowance (T. 726).

Recross-examination:

In the expenses set forth on sheets 3 and 4 of Government Exhibit No. 124, I have not set up an item to cover the additional expenses on additional personal property to be purchased by respondent, amounting to $50,000 per year.

[fol. 1087] Redirect examination:

Allocation of Maintenance, Repairs, and Other Expenses

I know the basis of allocation of expenses customarily used in cost accounting for department stores (T. 727). Two methods are employed, the square foot area weighted for the most valuable locations in the store, and, in some cases, cubic foot contents. As to whether either of these methods might be applicable to the allocation of costs in respondent stockyards to functional operations such as loading and unloading, the square foot method might be applicable. I wouldn't say without giving it study, but the square foot area of the facilities used for loading and unloading as compared to the total facilities used for handling of livestock could be made the basis for redistribu-

tion of certain expenses such as the maintenance of the plant. The square foot area possibly weighted for the value of the structures could be made the basis for allocation of plant maintenance expense. That basis might not apply in the case of wages. Another basis would have to be determined for that and still other bases would have to be determined for the allocation of other overhead expenses (T. 728). The allocation of maintenance costs on the basis of square foot area could be done from the information placed in the record by Mr. Christensen. I know of no method by which, from facts already in the record, labor costs could be distributed. As to general overheads, insurance, this would be distributed on the basis of s[illegible]nd value; traffic department expenses, on the basis of revenue produced by species and by mode of arrival, or the number of head by species [illegible]e of arrival, that is, off-hand, what bases might be used. I have given it no study and those are off-hand opinions and are the only ones where [fol. 1088] off-hand a basis comes to my mind readily. Gross income could be used, value could be used, area could be used. Those are sometimes classed as arbitrary bases. Obtaining the particular facts to make a distribution of labor costs might or might not require a long study and investigation, depending on how exact such allocation would have to be. It would be quite a lengthy job for me to make a study and investigation to enable me to distribute all the costs among the various functional activities in the respondent stockyards in a manner satisfactory to myself. It would require months (T. 730). Distributing all costs as between loading and unloading on the one hand and the other functional activities of the Stock Yards Company on the other would require an investigation because in allocating certain expenses a 100 per cent basis would have to be determined and the ratio of loading and unloading facilities to the total 100 per cent would have to be determined, which would be a very long job.

Depreciation Reserve

City personal property tax in the last year for which I had information amounted to $4.38 on the Transit House and $1.25 on the harness shop, less 2 per cent for cash. State and County taxes on personal property was $8.20 on

the Transit House and on personal property of the stockyards which covers, as far as I could determine, equipment, loan to Swift and Company, all other personal property which the company has, $279.82, which is the total amount of personal property tax this company has paid for a year (T. 731).

Recross-examination:

Allocation of Maintenance, Repairs, and Other Expenses

Distribution of loading and unloading expenses upon the basis of gross income would not necessarily produce a cor- [fol. 1089] rect amount. As a general proposition, that is a purely arbitrary method. If you take the gross income from a business for the different activities and distribute expenses upon that same basis and the company is making a profit from all its activities, you will have the result of having a profit from each separate activity, whereas it may be that 99 per cent of the profit is earned from some one activity, and some other activity is actually losing money. The gross income distribution method does not give a correct result except when the cost of operating a function or department is in the same relationship with the gross income, and the mark up on the commodity sold or on the commodity offered for sale is in the same percentage (T. 732). Referring to department stores, one department might be losing money and another making money, and yet the gross income adjustment would indicate they were all making money if the entire business were profitable. As far as income is concerned, the same criticism would be true of the method of distribution of income on the basis of value. As far as expense allocation is concerned, I do not believe it would be true in the same degree that the gross sales method would be. One might have in the same property two units each with a value of $50,000, and one might be losing money and the other making a handsome profit. That might be true in a particular case, but I do not think it is true as a general proposition. If that method of allocating expenses is applied to the property of respondent, the Transit House would be making a profit (T. 733). I know it is not actually making a profit. The same erroneous results are apt to follow from distribution merely upon an area basis. If a client were to employ me

to determine the expenses involved in a particular operation of a plant having numerous contemporaneous operations, I would not adopt either of these three methods. For [fols. 1090-1150] certain particular expense items I might feel inclined to use certain of those bases, for instance, I am inclined to think I would use the gross income basis for distribution of expenses of the type of traffic department expenses. Cost accountants will not take a basis for distribution of expenses and apply it to all of the expenses, regardless of the nature of them. They may use a few bases, and they may use as high as 50 or 100. I have in mind a particular cost job where I used over 50 bases of distribution, and that is the situation where an individual wishes to make a cost study that will be within a reasonable degree of the actual facts (T. 734). If I wanted to find the profit made on feed on the one hand and yardage on the other, I would not attempt to do it on the basis of gross income from each. As to repairs, I am inclined to think I would use value or area. I believe I would take area and, of course, weight it for value of the structures that are on it, giving particular regard to the nature of the structures in weighting (T. 735). I have not done this in my audit. I have not attempted to allocate the repairs to each type of property except to the extent that I did segregate the expenses of the Transit House so far as I was able to do so (T. 736).

[fol. 1151] Mr. John A. Zelinski, a witness called by the Government, after being duly sworn, testified as follows:

Direct examination:

Land Values

I recently made an appraisal of the value of the lands of the St. Joseph Stock Yards Company in Buchanan County and the City of St. Joseph, Missouri.

Qualifications

I am a graduate civil engineer from the Ohio State University, having received my degree of civil engineer in the year of 1914. My experience in engineering work began

prior to my graduation from the University, when for a time I was connected with the county engineer of Lake County, Ohio, at Painesville, Ohio, and for a while as assistant city engineer under the same gentleman at that city. Subsequent to my graduation I returned to Lake County, Ohio, and worked in the same general line of work, and also as a private practitioner in engineering, became city engineer in the City of Painesville in 1916. During this time I engaged in considerable land surveying and work of that nature in preparation of special assessments and valuations for the county and for the city. My work in land appraisal in the actual (T. 990 and 991) science itself began early in 1917 when I went to work for the Interstate Commerce Commission as a Junior Land Appraiser and continued, with some interruptions, from January, 1917, until the latter part of 1927. While with the Interstate Commerce Commission, I occupied all of the positions in the appraisal work from Junior Land Appraiser to Assistant Supervisor of Land Appraisers. For the last three years of my connection with the Interstate Commerce Commis- [fol. 1152] sion, I was in that executive capacity. The intervals of time when I left the service of the Commission were while I was in the United States Army from September, 1917, until June, 1919. And again I left the service of the Commission for a period of about 10 months in 1920, when I was Construction Engineer for the Diamond Alkali Company, and its affiliated railroad, the Fairport, Painesville and Eastern, and the early part of 1928 I left the service of the Interstate Commerce Commission to become Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities, and was with that organization until October, 1929, when I opened my own office to practice as a consultant on railroad and utility regulation at Washington, and have been so engaged since. During the course of my work with the Interstate Commerce Commission, I have appraised lands, both in a subordinate capacity and as an individual responsible appraiser, and passed upon the appraisal or the work of other appraisers, in most of the big cities in the United States, particularly east of the Mississippi River, and, since practicing as a consultant, I have looked after the valuation of land work for railroads like the Pere Marquette, the (T. 992) Virginian Railway, Western Maryland Railway, Lake

Superior and Ishpeming Railroad, the Canton Railroad of Baltimore, the Louisiana and Northwest Railroad, the Unity Railways of Pittsburgh, the Aliquippa Southern. There may be some other minor properties that I cannot now recall. In addition, I would like to state I made the appraisal of the Omaha Stockyards for the Secretary of Agriculture and the Sioux City Stockyards at Sioux City, Iowa, as well as the properties here at St. Joe, Missouri.

The specific purpose of the valuation was for all uses contemplated by the Interstate Commerce Act, among which, of course, are for rate making purposes and for [fol. 1153] recapture of excess income, and also for the use in connection with the issuance of securities, and matters of that kind. (T. 993).

With my assistants I made some of the land appraisals of the Interstate Commerce Commission. I made them in many cities, particularly east of the Mississippi River. So long as I was with the Interstate Commerce Commission I was not assisted by anyone outside of the Commission. The assistants were usually other employees, assisting in two ways. Some were employed almost solely in the capacity of getting information and others were employed in more responsible capacity where they were responsible for portions of the appraisal itself (T. 994). These appraisals were solely the work of employees of the Commission, including myself. I gathered information from various sources in making these appraisals.

Some of the larger appraisal jobs on which I worked were as follows: The bulk of the appraisals incident to making the valuation of the Pennsylvania Railroad on lines east, including such terminal cities as Cleveland, Detroit, Pittsburgh, Philadelphia, New York and Washington; in connection with the appraisals of the New York Central properties at New York, Buffalo, and Cleveland and similar cities. In these appraisals I appraised land in both cities and country districts, the entire railroad lands (T. 995). After establishing my private office, in many instances I made appraisals of land of railroads. In many instances I have been retained in a consulting capacity where the appraisal itself has been performed by other men and I was asked to review their work, check it up and strengthen it, where it appeared to be necessary to revise either the supporting data or the conclusions in the light of checks which

were made by me. Practically all appraisals which I made since opening my office were for use in connection with [fol. 1154] valuations incident to recapture proceedings whereby the Interstate Commerce Commission was seeking to determine the extent to which railroads are subject to recapture of income in excess of six per cent of their value. In the instances where I acted as a consultant, the object of the appraisals was the same. I am still engaged in that work, representing railroads (T. 996). I am not now working exclusively for the Secretary of Agriculture. In recapture cases the Commission finds a value of the railroad property and according to the views of the Commission that finding of value proceeds along lines usually employed in finding value for rate making purposes. The Commission thinks that it is finding its value in accordance with the law of the land for the purposes of rate making. To some extent there is a difference of opinion on that subject. My personal procedure is the same in appraising land for recapture proceedings and in appraising land for rate making purposes.

The appraisals of the Omaha and Sioux City stockyard lands were made before the appraisal of the stockyard land at St. Joseph (T. 997).

Appraisal of Land of Respondent

Upon being definitely retained for the work of appraising the land of respondent, I proceeded to analyze all of the sources of information at Washington which I thought might have a bearing on the valuation of the lands to be appraised. Now, in particular I was aware of the fact that there had been valuations made of the different railroad lands in the vicinity of St. Joseph, and particularly in the vicinity of the stockyards location, and I analyzed the records in the valuation proceedings before the Interstate Commerce Commission to determine what, if anything, in the way of information had been adduced in connection [fol. 1155] with those proceedings that might be helpful. In that connection I paid particular attention to the valuation proceedings and the recapture proceedings incident to the findings by the Commission on the St. Joseph Belt Railway, which is most intimately connected with the lands of the St. Joseph Stock Yards Company, and I also went to

the files of the Interstate Commerce Commission to abstract such supporting data as had been used by the Interstate Commerce Commission, or had been quoted in support of the valuations by the railroads upon whom the investigation and proceeding had been brought. Subsequently I came (T. 998) to St. Joseph and proceeded to supplement that information by a record search at the court house, the Buchanan County Court House, and inspection on the ground in the light of all of the information which I had secured. In that connection, I took up with Mr. Topping and Mr. Strack the question as to whether the sales data which had been used in the St. Joseph Belt Railway hearing, and upon which there had been an agreement as to facts but not as to the applicability of the sales data, whether it would be possible to use that data without any further checks as to the detail facts and was satisfied that I had an understanding that that would be an agreeable procedure, and, to that extent, the sales search, of course, was shortened. From there on, the appraisers for the Stock Yards Company, Messrs. Spratt and Quinn had been furnished with additional records of transfers by the Stock Yards Company, and I, myself, have made a search at the court house during the time when this data was being gathered for these gentlemen, who were then collaborating in the setting-up of these sales data, and interviewing the parties to the transfers to the extent that we were able to find them joinly, in order to ascertain the facts as to the transactions, and those are reported in the sales sheets [fol. 1156] which are submitted in connection with my appraisal (T. 999).

Mr. Topping is the General Manager and President of respondent, and Mr. Strack is its counsel. Mr. Spratt and Mr. Quinn have been retained by respondent to make an appraisal of its land. They all agreed that the data respecting sales as it was used in the St. Joseph Belt Railway hearing could be used without further check as to facts. No attempt was made to determine the extent to which we would consider the data applicable and no agreement in that respect was made. That this data was applicable in part was understood as we went along, but the extent or weight was not agreed on and no attempt was made to agree to the extent of applicability or weight which might be given to an individual transfer. Transfers of property

within the corporate limits of St. Joseph are recorded in the Buchanan County Court House (T. 1000).

Now, after I collected this sales information, I also made a study of the use of the property on the ground, the accessibility of it from the standpoint of roads and streets and railroad accessibility, the character and kind of railroad facilities and switching services which were available to the site, all the lands in question, and I gathered such statistical information as I felt might have a bearing on the general value situation in the territory, such as the volume and value of the stock which moves through the yards, and the volume and value of the manufactured products which are produced in the vicinity of the lands, and the general business statistics as to bank clearings and debits for the city as a whole, and for the stockyards bank, such information as was made available to me by the officials of the Stock Yards Company and of the bank, and made a study of the topography and interviewed the engineers at the City En- [fol. 1157] gineer's Office and the Highway Department as to the nature and kind of improvements that serve the city and the general territory, interviewed the Army Engineer's Office in Kansas City as to the nature and kind of improvements that were proposed for the river, what was being done in the way of protection and abutment work, what the records of the engineering department showed as to the condition of the river in so far as high and low water is concerned, as far as that might have a bearing on the values of the lands in the general territory, under the specific zones of value in which I subdivided the property for the purposes of the appraisal.

After I proceeded to some extent in the study of value and it became apparent that I would subdivide the areas into zones of value, I had some little further discussion with Messrs. Strack, Topping, Spratt and Quinn as to the possibility of so delineating the zones that we would during the course of this proceeding all be talking about substantially the same areas, and it was suggested that, in so far as it will be possible to follow it, that we use the same zoning as the Secretary of Agriculture has used in a prior finding on this same property, and, before I left the city, I advised these gentlemen that I would follow the zoning of the Secretary of Agriculture, whereupon maps were prepared with the areas computed for those zones by Mr. Black

and Mr. Henrici jointly. Copies of those maps were furnished to myself and I understand to the stockyards appraisers, so that the zones of value I would expect we will probably be talking about will have the same limits, in so far as the areas are involved for each of the particular zones.

In my investigation, I personally viewed and studied each and every zone as shown on the map about which I spoke. I went over all of these zones in my study. In my present work in representing railroads in rate and recapture pro- [fol. 1158] ceedings, I have made land appraisals in cities scattered about the United States. I proceeded in making the land appraisal of respondent's lands in the same way I made the appraisals for my railroad clients. (T. 1003).

Government Exhibit No. 128 is the report of the appraisal which I submitted to the Secretary of Agriculture and includes the summary of the appraisal by zones of value indicating the area for each zone, the unit value found by me for that zone, and the zone value. In addition, it contains in the text commencing on page 2 of the report a description of the method of the appraisal, general description of the lands under appraisal, the railroad facilities, description of the highway facilities, description of the topography and lay of the land, some comment on building and zoning restrictions in the vicinity of St. Joseph and in the vicinity of the yards, comments on the assessments for taxation, comments on the sales data, and comments on the business depression and land values, and it includes graphic illustrations of the receipts of the different classes of livestock, and a graph of the local slaughter. It includes a graph of the value and tonnage related on a percentage basis of Armour and Company's business at South St. Joseph and a graph showing the total debits of St. Joseph banks and the stockyards bank.

The debits of the St. Joseph banks include all the banks in the St. Joseph Clearing House, whereas, the debits for the stockyards bank are the debits for the bank which does business right in the Exchange Building in South St. Joseph. That is on page 18. Debits are the total transactions which clear through the banks.

Now, following the text covering the general description in the report, I have a detailed description of each of the zones and comment incident to each of these zones of value.

[fol. 1159]. These commence on page 21 of the report for Zone A and continue for 20 pages, the last zone being Zone No. 3 on page 40 of the report. Page 41 is a topographic map of the general South St. Joseph territory made by the United States Geological Survey.

The purpose of including that in the compilation is to give the general topographic features of the territory within which the Stock Yards Company property lies. Now, I have also attached as a separate map in the report, a larger scale topographic map of the property in the immediate vicinity of the stockyard. That is an unnumbered map, but is to be found under a heading entitled "Chart No. 91, Missouri River Mouth to St. Joseph, Missouri in 92 charts and Index Sheet," and the title of the map is self-explanatory and it shows on a larger scale the territory involved under the appraisal and for the areas of stockyard lands, the contours are made on a 2-foot interval, and for lands which are relatively as flat as those in the stockyards area, this map is, of course, of much more detail and a great deal easier to read.

Well, I wouldn't say that I ran any levels. I asked Mr. Black to identify the differences in elevation, if there were any, and he made some measurements at the respective water tanks, the result of which was that we found out that the lands of the two water tanks were within one inch of the same elevation. And I carry a hand level with me on most of my work, an engineer's hand level, and, from time to time, where some marked topographic feature looks to me like it might be worth looking into, I just take it out and look over the lay of the land. I found that just trying to rely on your own idea of differences in elevation is sometimes misleading, and, if you have a small engineer's hand level, it does not take up very much room, and you [fol. 1160] can take it out and easily identify differences in elevation where the land appears to be pretty flat, and I used that, from time to time.

One water tank is near the corn sacking elevator, and the other one was the big, concrete water tank opposite Swift and Company's plant, near the material yard, the water tank at the material yard.

Mr. Black is the engineering superintendent at the yards. He told me that there was just about an inch between the water tank near the corn sacking elevator and the large

concrete reservoir (T. 1008). I don't recall which was higher or lower. In so far as I am able to determine this Chart No. 91, which is supplemental map No. 4, Government Exhibit No. 128, is a correct portrayal of the topography of the stockyard land.

Following the small scale topographic map, I have on page 42 of the report certain of the collateral information that I gathered which I felt might be of some significance in connection with the appraisal, and I list, among other things, special ordinance No. 4324, and a contract lease on page 43 between the city of St. Joseph and the St. Joseph Stock Yards Company, and special ordinance No. 4185 on page 47, and immediately following these is a digest of the sales data which were investigated by me in connection with the preparation of the appraisal.

Special ordinance No. 4324 is an ordinance vacating part of Indiana Street in South St. Joseph Town Company's second addition to the city of St. Joseph. Now, the purpose of listing these vacating ordinances is to show collaterally that that particular street area has been closed to public use, and to the extent that access by streets has a bearing on the value, I felt that an ordinance of this type might well be listed along with other information which I [fol. 1161] had gathered that I thought had some bearing on the appraisal.

Indiana Street ran through a portion of the lands of respondent and is now included in the lands of respondent. The lease between the St. Joseph Stock Yards Company and the city of St. Joseph discloses the existence of certain easements for drainage purposes which were granted by the Stock Yards Company to the city of St. Joseph across the property of respondent. The special significance of special ordinance No. 4185 on page 47 is that it is also the vacation of portions of streets and alleys (T. 1010).

Transfers, in General

Beginning on page 48 and running to page 173 are sales sheets which are the digests of transfers of property which took place within the general vicinity of the stockyards lands and are data which I had before me at the time I was arriving at my conclusions as to the values of the individual zones. These are the sales to which I testified I agreed with certain representatives of respondent that

the facts were as stated in the record on these sales. The outlines of the property involved in each individual transfer are shown in red ink on supplemental map No. 3 to Government Exhibit No. 128 and each area bears the same number which is given to that transfer on the sale sheet. These outlined areas on the map can be identified with the sale sheet by the use of these numbers. Some areas outlined on the map include two separate numbers which indicate that duplicate transfers were picked up or it may be that they had (T. 1011) a resale of the same area and both numbers are shown in the outlines of the area. By reference back to the sales sheets it can be determined in which instances these numbers represent duplicates and in which [fol. 1162] they represent resales. These transactions on the sale sheet include other forms of transfer than sales in which the fee simple title passed from one person to another. Occasionally there are some leases. There may be a few mortgages, deeds of trust or other form of transfer given as security for debt. It was endeavored, of course, to restrict the information purely to actual transfers of property and leases of property which might be indicative of value of the particular property that was covered by the outline. They only include foreclosure and other forced sales where it was not possible to determine in advance of the transaction that the transaction turned out to be a foreclosure. One or two of these transfers listed here upon investigation developed to be either foreclosures or transfers for convenience to avoid foreclosure (T. 1012). There may be one or two that were transfers of convenience which were not to avoid foreclosure.

After I listed these transfers I investigated them outside of the record. The ground was visited jointly by Messrs. Spratt, Quinn and me. We interviewed the parties to the transfer wherever they were available, or at least one of the parties, to verify the bona fides of the transfer to the extent that it was possible to do so. This was all done in conjunction with representatives of respondent. However I made certain supplemental investigations incident to individual transfers which are listed and which it was not possible for me to do jointly with representatives of respondent. An example of this was information I was able to obtain at Washington about certain transfers.

I gave some consideration to each and every one of the transfers listed in Government Exhibit No. 128, but did not give them all the same weight (T. 1013). To some of them I gave no weight, but to others partial weight or some [fol. 1163] weight towards the forming of a conclusion as to an individual situation (T. 1014). Sales in the residential sub-divisions east of the railroad tracks, particularly of the residential properties, were not given very much weight by me in the conclusions I reached as to value on the main body of the lands of the respondent, that is to say, on the lands in Zones A, B and C. I did give some consideration to the sales of these residential properties as a possible indicator of value of some of the outlying areas which might be sub-divided and sold for a similar utility. In so far as the sales of industrial properties themselves were concerned, such as, for example, sales 6, 5, 3, 4, and 11, sales of that type, I gave those consideration in making up my mind as to a level of industrial values in this general vicinity, that is to say, values of lands for general industrial purposes. Now, transfers like 19, 20 and 21, which are leases of areas of a semi-retail nature, incident to a wholesale use in part, I, of course, gave consideration and some weight as to the sales as being applicable to a small portion perhaps of the areas of the respondent's lands, but as not being indicative of large industrial holdings held in what might be called assembled areas, such as Zones A, B and C, for example, so that I would say in general that I could not state specifically the exact amount of weight that would be given to any individual sale in reaching a conclusion as to value of the zone. Nevertheless, the sales were considered by myself particularly in getting a background as to what the general level of value would be in this vicinity. Other than Zones 1, 2 and 3 none of respondent's land is within the corporate limits of the city of St. Joseph. Some of the sales of residential property were within the corporate limits of St. Joseph, and some were outside. Kirschner's Addition at the lower left-hand corner of supplemental map No. 3 is [fol. 1164] an example of a residential addition outside of the city limits. In discussions of the individual zones I have referred specifically to certain of the sales that might have more or less bearing in forming a conclusion as to values of individual zones and that will appear in the body of the report in the discussion of the individual zones. I

did not give weight to a sale found to be the result of a foreclosure or other forced sale in determining my values (T. 1016), nor to a transfer of convenience to forestall a foreclosure or a forced sale. There were a few transfers where the parties were not dealing at arms length, that is the grantor and grantee were in practical effect the same. I gave very little weight to this except in so far as it may have appeared that the transfer had been arranged on some sort of a basis that might be some indication of value (T. 1017).

Sale No. 55

In the course of examining the audits which were being prepared by the Government accountants I was not satisfied as to the bona fides of sale No. 55, and made further investigation at Washington, and was satisfied that it could not be used as a measure of value. That was a transfer of title of the land used by the St. Joseph Belt Railway Company as a right-of-way for its tracks and other facilities which is shown on Supplemental map No. 3 in orange coloring surrounding certain zones of respondent's land. Prior to the transfer, the title to that land was in the St. Joseph Stock Yards Company, the St. Joseph Belt Railway Company holding it under a lease (T. 1018). At the time of the lease the St. Joseph Stock Yards Company owned the capital stock of the St. Joseph Belt Railway Company. I could not state definitely, but it would appear that the St. [fol. 1165] Joseph Stock Yards Company still owned the capital stock of the St. Joseph Belt Railway Company at the time of the transfer of the real estate on December 11, 1929 (T. 1019). Certain officers were in common in both companies. That is, certain officers of the Stock Yards Company were also responsible officers of the Belt Railway Company. The record consideration was $100. There were certain other considerations providing for mutual arrangements whereby certain streets and roadways would be left open, certain easements which provide for common arrangements for handling certain facilities would be maintained, and, in addition, there was shortly thereafter an agreement which is shown on page 110 of the report entered into between the Stock Yards Company and the St. Joseph Belt Railway Company which apparently was under consideration at the time of the transfer of the land. All

of these items, I think, have a bearing on the normalcy, so to speak, of the transaction (T. 1020).

I investigated the audit of respondent's books by Mr. Bachmann and his assistants to determine what consideration respondent's books carried as having been paid to it for the transfer of that land. I found that ostensibly the total area of 82.356 acres was transferred for the consideration of $1,020,499.05. There were two separate areas, one at the rate of $2,000 an acre, and the other at the rate of a little in excess of $14,000 per acre. The two areas were not broken down on the map, but they are shown on the sale sheet. I was not able to secure from the records of the Stock Yards Company any exact delimitation between the two areas which went to make up the grand total (T. 1021). I do not feel that it would have helped me if I had been given a breakdown of the location of those two tracts for the reason that I was satisfied that the bulk of the outlying area was down in the vicinity of the so-called car [fol. 1166] cleaning tracks, and that, for that reason, the $2,000 per acre rate for that class of land, as in comparison with the general average for the Belt area proper, did not look out of line and I had just that sort of thing in mind when I was considering the sale. The fact of the matter is that some discussion which I had down at the company's office led me to believe that that was where the change in area was involved (T. 1022). The car-cleaning area is south of the round-house area.

Sale No. 53-A

Sale 53-A shown on page 101 of Government Exhibit No. 128 was a transfer from Swift and Company to Henry Veeder for the St. Joseph Stock Yards Company. I made some inquiries about that transfer and satisfied myself that it probably was not an indicator of real value and did not give it very much weight. However, I found in the course of my investigations certain information which appears in back of the transfer on pages 102, 103, 104, 105 and 106, which I thought had some pertinency at the time of the respective instruments. I was also advised subsequent to the filing of my report by Mr. Phalp of Swift and Company that the general conclusions that I had about the transfer were about right, namely, that it was not an indicator of value. I did not so consider it (T. 1023). Mr. Phalp referred me to some

testimony about that transfer before the Interstate Commerce Commission which I have read and with which I am familiar. It was the Recapture case of the St. Joseph Belt, Finance Docket No. 3906. On page 101 under sales analysis is the sum of $23,200, which was the supposed consideration for this transfer, which is $2,000 per acre. That tract is shown on the land map, supplement map 2, as Zone D (T. 1024). There has been transferred from this tract to the [fol. 1167] St. Joseph Belt Railway Company a small strip through the center reducing the area from 11.6 acres to 11.436 acres. The reason I placed a unit value on that zone of $4,000, notwithstanding the purported transfer at a price of approximately $2,000 per acre was in part due to the things about which I have just testified. Referring to pages 102 to 107 of Government Exhibit No. 128, in connection with transfer No. 53-A I found this copy of the minutes of the Board of Directors of Swift and Company, which had to do with transfer of this land, and, before I had gotten my verification from Mr. Phalp, I thought that that information ought to go along with the transfer, so I attached it to the report because it would seem to indicate that according to those minutes of the Board of Directors, the sale was a fair sale. However, this testimony in the docket indicated that it was really a transfer of convenience and was not indicative of value, and, as I stated, regardless of these minutes on the transfer of this property, it looked to me that it could not have been at its full value, so I placed a higher value than that on the zone. It is just my opinion that the zone is worth more money. On pages 105 and 106 appears a release from the First Trust and Savings Bank as trustee. This piece of property was covered by a general mortgage and the mortgage had a provision whereby, before the sale of any property covered by it could be transferred, it would have to be released from under the cover of it, and the copies of instruments on pages 105, 106 and 107 show that clearing to the title. Notwithstanding the lease contained the following statement: "for and in consideration of the sum of Twenty-three Thousand Two Hundred Dollars ($23,200.00), the selling price of the premises hereinafter described and a certified copy of a resolution passed by the Board of Directors of Swift and Company, a [fol. 1168] corporation organized and existing under the laws of the State of Illinois, with principal office at Union

Stock Yards, Chicago, Illinois, stating that in the judgment of said Board of Directors the said premises are no longer required or useful for the business of said Swift and Company, and stating the selling price thereof, and a sworn certificate by the Secretary of said Swift and Company, stating that the amount for which the said premises have been sold is a fair price therefor,'' from further investigation I was not satisfied that the value stated in the release was a fair value, and consequently put a higher value on the property (T. 1026).

Zone A

A discussion of Zone A begins on page 21 of Government Exhibit No. 128. That is the zone upon which are located the major facilities of respondent, such as the Exchange Building, the loading and unloading docks, the cattle, hog and sheep divisions for the receipt and holding of livestock for immediate sale, and related facilities. I would not say that each and every portion of that zone is equally valuable. Five thousand dollars per acre is an average value for the zone. I attempted to place an average value for the entire 71.941 acres in the zone. If I cut out individual portions of that zone I might have a materially higher unit, and certain other portions might have materially lower units than five thousand dollars. In arriving at the value of $5,000 per acre I considered the land as being stripped of the super-structures now thereon (T. 1028). I considered it was stripped of such sub-structures as appeared in the engineer's inventory, but certain of the sub-structures, such as those belonging to the public utilities of water and gas and electricity, and items of that kind, were available, and [fol. 1169] I considered, of course, such items as paving, which were inventoried by the engineers as being stripped off of the land, since the area upon which the paving, such as that on Packers Avenue and Illinois Avenue extended, was included in the engineer's inventory (T. 1029). I considered the land as stripped of all structures, both super and sub, which are owned by respondent and included in the inventory and appraisal made by the Chief Valuation Engineer for the Government. I considered the other super and sub-structures thereon which were not owned by respondent as either remaining in place or available since the

stripping of certain of the sub-structure improvements which respondent owns might involve a change in location of certain of the utility facilities, but I did consider that the utility facilities were available to the land (T. 1029). I considered the land at its present grade. I considered it as having all of its surrounding environments and facilities, such as railroads, packing plants, availability of electricity and water, gas, proximity of the retail district of South St. Joseph, and all of the surrounding conditions as existing just as they do today. I considered Zone A as an assembled industrial tract. In the last analysis I did give some thought to the possibility of portions of the tract being used for a retail or semi-retail development, and to some extent that portions of it might be usable as a commercial or wholesaling area, but the zone generally was considered by me as an assembled industrial tract, ready for use for any industrial purpose by an industry which could use that sized area, or a group of industries which together might use that size of an area. I also considered that under the circumstances of the relationship of the surrounding development, that the property was very highly adapted to a stockyards use, but I did not consider that the use would [fol. 1170] necessarily be made in identically the same way that it is at the present time. In other words I did not consider the value of this land based upon the present use of it, but did consider the availability of the land and site for a similar use, or for a general industrial use (T. 1030-1931).

I think stockyard use is probably the highest and best use to which Zone A could be put. I considered its adaptability for that use and its availability. Some of the zones other than Zone A have structures on them, some are entirely vacant, some partly vacant, and some partly covered with structures. In my appraisal of the other zones I followed the same general principles described in arriving at my valuation of Zone A in so far as those principles were adaptable to the other zones. Some of the other zones, in my opinion, are both available and adaptable for stockyard use (T. 1032). I covered that in the description of the individual zones. With the packing plants located just as they are and other things just as they are it is my opinion that certain zones have an adaptability and availability for stockyard use. To a certain extent certain of the other areas suffer dis-

abilities in comparison with Zone A, for that particular kind of use, but to the extent that those disabilities can be overcome I think it will be possible to make such use of them. These zones are less valuable. Zone A carries the highest unit of value of the so-called industrial areas outside of the city. There is one zone in the city limits of St. Joseph where I placed a higher unit value than on Zone A, the Illinois Avenue frontage, of course, derives its value from an entirely different approach to the problem than Zone A. The existence of these lesser valued zones which are available and adaptable for stockyard use has a bearing upon the value of Zone A (T. 1033). The existence of large areas of land which, even with some difficulty which might [fol. 1171] be overcome, can be made available for a similar use, naturally acts as a depressant upon values of the lands that are actually so used. That is to say, that where an alternate area is susceptible of a like development, even though at greater expense under the present circumstances, it has a tendency to hold down a scale of values which another piece of property might derive from having a monopoly of those elements that would make it the only site available (T. 1034).

Zone 1

The Illinois Avenue frontage is in Zone 1. It is occupied in part by a brick hotel building known as the Transit House, in part by a driveway leading into the sheep feeding division, and in part by a vacant store structure adjoining the Journal building (T. 1034). In arriving at my valuation of that tract I gave consideration to its availability for the uses similar to the ones to which it is now being put. I also considered that its location was in the secondary retail district which generally fronts that street, and that it had an alternate use for any of the retail utilities found in that street. The highest and best use, economically, that zone could be put to would be retail store use in keeping with the neighborhood. I gave that weight. It is on that basis that I arrived at my valuation of 50 cents per square foot (T. 1035). I was aware of the very small gross rental received from the Transit House and also examined the audit to see the rentals which were derived from the use of that site. Those rentals were being re-

ceived at the time I made my investigation for my appraisal. If I had based my appraisal on the actual particular use which is now being made of that property rather than its highest potential use my value would be materially [fols. 1172 & 1173] lower because the use to which the property is put is apparently not an economical use.

Summary of Appraisal

It is my opinion that the land of respondent stripped of its improvements could not be marketed under present conditions to bring in $968,732, which is the total value of the land appraised by me (T. 1036). Some of the smaller zones where small sums of money are involved might be marketed separately at the prices I have placed on them, but in general it is my opinion that even the individual zones would not be marketed under present conditions to produce the prices at which I have appraised the property. Neither Zone A nor Zone B could be so marketed. Zone 1 might be. I doubt if Zones 2 or 3 could be. Zone C could not be so marketed (T. 1037). The conditions I have in mind which caused me to make these statements are that the real estate markets throughout the country and in St. Joseph in particular, are quite stagnant. Such investigation and study as I made of the situation while preparing my appraisal led me to believe the market was very slow, and the rate of transfer of this type of industrial property was so slow that it is my judgment that any endeavor to sell areas as large as these would result in the seller having to take lower prices. The values which I have placed on these separate zones do not in any instance represent stagnation values. I have endeavored to place a value on each zone that I thought represented what the property might be sold for under some recovery from the present depressed conditions and under situations that were a little bit more really normal as far as business was concerned, and as far as banking was concerned. By that I mean conditions to which I would look forward in the future (T. 1038).

[fol. 1174] Government Exhibit No. 128

The unit and total zone values shown on page 1 of Government Exhibit No. 128 represent my judgment and opin-

ion of the true value for rate making purposes of the zones so shown and valued (T. 1039). They are as follows:

Summary of Land Appraisal

St. Joseph Stockyards Company, South St. Joseph, Mo.

Zone	Area		Unit Value	Zone Value
	Acres	Sq. Ft.		
A	71.941	.....	$5,000	$359,705
B	17.601	.....	3,500	61,604
C	24.655	.....	4,000	98,620
D	11.436	.....	4,000	45,744
E	10.283	.....	3,000	30,849
F	45.951	.....	1,000	45,951
F1	.874	.....	.....	100
G	22.752	.....	1,000	22,752
H	10.313	.....	800	8,250
I	9.400	.....	800	7,520
J	24.873	.....	800	19,898
K	16.083	.....	700	11,258
L	18.316	.....	500	9,158
M	12.516	.....	350	4,381
N	56.412	.....	3,000	169,236
1	.....	23,697	0.50	11,849
2	.....	138,956	0.13	18,064
3	.....	625,609	0.07	43,793
Totals	371.502 Acres			$968,732

Cross-examination.

Qualifications

The first stockyards appraisal made by me for the Secretary of Agriculture was at Omaha in October, 1931. That was the first time I had ever been that far west (T. 1039). I had been in St. Louis and Minneapolis which are on the west bank of the Mississippi River but had not been farther west. In addition to myself, Mr. Graham and Mr. Slater appraised the property of the Omaha stockyards on behalf of the Secretary of Agriculture under a contract [fol. 1175] (T. 1040). I understand that two appraisers, Messrs. Sholes and Tukey, appraised the same property for the stockyards company. At the time I was making my investigation for the Omaha stockyards appraisal Mr. Slater accompanied me a substantial amount of time. I gathered some information in Omaha with Mr. Slater and some I had already gathered before I went to Omaha (T. 1043). I showed what I had already gathered to Mr. Slater. The two of us had the benefit of each other's personal knowledge as to facts. That was roughly over a period of about

a month while I was in Omaha. On occasion Mr. Slater and I discussed the data we had developed together. To a varying extent we discussed the applicability of that data to the question at hand, to wit, the valuation of the land of the Omaha stockyards. As far as I know Mr. Slater had all the data I had. Mr. Slater and I did not use quite the same zones. The zones were originally laid out together and Mr. Slater made some minor departures such as having more than one unit price for one zone (T. 1044). He made some sub-zoning. We did not arrive at our unit prices together. I went back to Washington and arrived at my unit prices and Mr. Slater stayed in Omaha and arrived at his (T. 1045). $1,741,416 sounds substantially like the correct figure of the total valuation, or of my total valuation of the land of the Omaha stockyards (T. 1046). The appraisal of Mr. Slater was produced at Omaha while I was on cross-examination. I looked at it during the course of my examination, being called upon to look at the total amount of Mr. Slater's valuation. The amount of $5,900,-631 is approximately the figure that I recall as being one of Mr. Slater's figures. I understood he had another one. The figure given is approximately the figure I saw in the appraisal and to which I was asked to refer several times [fol. 1176] on cross-examination. My recollection is that it was somewhere in excess of five million dollars and I do not know exactly what the figure was. I recollect that the Graham appraisal was in excess of seven millon dollars (T. 1048). I was not there when the stockyards appraisals were introduced but I have an idea they were around seven million dollars anyway. Mr. Slater was a real estate man in Omaha and hired by the Government the same as me. I understand Mr. Graham was hired by the Government and was a real estate man in the City of Oamha (T. 1049).

I have never been in the real estate business any place which would include St. Joseph. I bought and sold real estate on my own account in Washington and in Ohio to a small extent. In Washington it was a fairly good sized development. I took over a piece of property of about five and one-quarter acres in one of the best residential sections, developed it and am selling it off. I still have some of it. It is a residential tract. Promoting a subdivision is a highly specialized field (T. 1051). There is sometimes a distinction made between a subdivision of

real estate for residential and for industrial purposes. I have never been in the business of buying and selling real estate in the City of St. Joseph.

I studied civil engineering at Ohio State University and received the degree of Civil Engineer, which did not include the study of land appraisal. While a student at the University and while I was assisting the county and city engineer of Painesville, Ohio, my work did not require me to make any specific appraisal of real property but did require me to make set-ups of the valuations for assessment purposes (T. 1052). I worked with the assessors in the county and city offices and prepared the prorata assessments for different kinds of public improvements. By that I mean I did the clerical and engineering work in that connection but I familiarized myself with the value of the [fol. 1177] property because some assessments, being public improvements in that county, had to take into consideration the values of the property as well. I did not fix the values, someone else did that. My work was of the same character in the period directly after graduating from the University and until employed by the Interstate Commerce Commission. My services in the United States Army were not of such a nature as to require the appraisal of real property. My answer would not be quite the same as to the period I worked for the Diamond Alkali Company as construction engineer because I was concerned with the construction of certain projects where land had to be acquired (T. 1053) and was familiar with what the company was going to have to pay for the land, so that it could determine the extent upon which it could proceed upon a particular kind of improvement (T. 1054). I did not buy the land, someone else did. I, of course, learned what they paid for it.

With the exception of the three stockyard appraisals, practically all of my land appraisal experience was in connection with proceedings pending before the Interstate Commerce Commission. While with that Commission my appraisals were for three purposes. The first was for railroad valuation under Section 19-A of the Interstate Commerce Act. The second was under Section 15-A of the Interstate Commerce Act relating to the collection of excess income from railroads (T. 1055). The other was in connection with proceedings before the Commission wherein

railroads sought permission of the Commission to issue certain specific securities. When I testified on direct examination that the values I found were used for rate making purposes, I referred to the work generally under 19-A. To my knowledge the Interstate Commerce Commission [fol. 1178] has never based specific railroad rates upon the valuation of the railroads who are charging the specific rates. The valuations are used principally for the group determination of value in general rate proceedings, and they are introduced in those general rate proceedings. I would not say that I know the Commission based its rates specifically upon that group valuation but would say that in general (T. 1056) there is considerable feeling that the rate is not a fair return. I am not a judge of what a fair return is.

After leaving the employ of the Interstate Commerce Commission I do not think I have ever made an appraisal of railroad property for a railroad of which I had made the basic appraisal while an employee of the Commission. However, in my supervisory capacity I reviewed the appraisals of railroads throughout the country and since leaving the service of the Commission some of my clients have been railroads where valuations have been made upon the property in the time when I was in a supervisory capacity. While acting in a supervisory capacity for the Interstate Commerce Commission I did supervise appraisals for certain railroads and later was employed by those same railroads to again make appraisals. I do not recall any instance off-hand where I made a specific appraisal of a railroad while in the employ of the Commission and later acted in a supervisory or consulting capacity in connection with the same railroad, although I may have made appraisals of small parts of such railroads. I do not recall any particular property where I made the whole appraisal before and have since been working for that particular carrier (T. 1057). I do not know just now where I made an appraisal as an employee of the Commission of a portion of the land of a railroad and after the termination of my employment with the Commission was retained by the same railroad in any capacity. In connection with the appraisals which I supervised while [fol. 1179] employed by the Commission, after supervising these appraisals, I did not assume the responsibility for

the appraisal only as to its correct set-up by the appraiser. The appraiser who made it assumed the responsibility for it. By correct set-up I mean it was in proper form and properly supported, based upon data which the appraiser had adduced in connection with his search. I attempted to form an independent opinion of the value of the land being appraised and in each and every instance formed such an opinion (T. 1058). I then checked the results with the data which the other employee had in his report to satisfy myself that the conclusion reached by the other employee was reasonably sound. I would endeavor in the first instance through discussion with the appraiser to convince him of any error I thought the appraiser had made and very often upon review the appraiser produced the figure on which we were both in accord as more nearly representing the value of the particular property under appraisal. In certain instances, however, appraisals were referred to me for an independent conclusion and I recommended to the supervisor of land appraisals that changes be made and such changes were made. As a general proposition, in every instance the changes would be made as a direct result of my reviewing the data which the other employee had gathered although sometimes it arose out of the presentation of additional data by the particular carrier whose property was being appraised (T. 1059). From time to time it would arise through no additional data. When these appraisals were then forwarded to the supervisor of land appraisals sometimes my signature would appear as having supervised or approved the appraisals but more generally the recommendation was made orally to the supervisor. Sometimes the oral recommendations carry the same weight with the supervisor as if they [fol. 1180] had been in writing. The procedure there was that in cases of a great many of these recommendations they were prepared in connection with hearings that were in progress. The supervisor would prepare over his signature recommendations to the director for changes in the so-called land report. It was these changes which generally carried the recommendations that I had made or some other assistant supervisor had made over men who had been delegated specifically to review that particular problem. In many of such instances I myself dictated the recommendations for signature by the supervisor. That was

quite a general practice while I was there (T. 1060). In the instances where I supervised appraisals while working for the Commission and later was employed by the railroad involved, in some instances I later made an appraisal of the same land I had previously supervised. In these later instances sometimes I arrived at the same unit values as the unit value in the previous appraisal which I had supervised and in some instances not. In some instances the reappraisal was greater and in some instances lower. The bulk of the appraisals (T. 1061) over which I had supervision were under Section 19-A and were generally of earlier dates, while the bulk of my work as a private practitioner has been of so-called recapture cases. I was with the Commission a short time while recapture hearings were going on and during that period I was supervising some of them. I supervised appraisals during that period in connection with which I was later employed by the railroad involved. My answer about some being higher and some being lower in the second appraisal applies to those. I left the Interstate Commerce Commission in December, 1927. The first recapture hearings were held by the Commission in 1926. It may be that the St. Joseph Belt Railroad Company, which records I stated I read at Washington, had a hearing under Section 15-A in 1925. I do [fol. 1181] not recall the exact date (T. 1062). If that is true the recapture hearings began earlier than 1926. In all the appraisals made by me since leaving the Interstate Commerce Commission I used the same method for the determination of what before the Interstate Commerce Commission is known as the basic land values.

In addition, railroads generally claim what is known as excess cost of acquisition of carrier lands. The Interstate Commerce Commission has ceased making determinations of that cost. However, carriers, because they feel that the Supreme Court may some day rule more definitely on the inclusion of excess costs, in order to put in the complete cost, very often have me make up estimates of the excess cost of acquisition in addition to the so-called basic land value. I follow the same method in determining the basic land value. Excess cost of acquisition is an entirely separate and distinct item (T. 1063). I did not in this case claim that the basic land value was the sum of the two. I claimed that the value of the railroad land for railroad

purposes is the sum of the two. I felt the same way about it while an employee of the Interstate Commerce Commission but being an employee did not prepare any estimates of excess cost after the Act was amended because the Commission ceased making such findings. However, prior to the amendment of the Act I did prepare such estimates while in the employ of the Commission and I believe the Commission should go on finding them. I think I testified to the equivalent of that before the Commission where the testimony was elicited on examination. Usually with the first mention of excess cost of acquisition, objection would be raised by various attorneys to any testimony on the subject, and as a rule, particularly in 19-A cases, the Examiner sustained the objection and the question was never answered. There were one or two instances where I recall I was specifically asked if I set out to purchase [fol. 1182] the land of the railroad which was under appraisal whether I felt that the land could actually be purchased for the appraised price and I testified that it could not in my judgment (T. 1064). That is still my view. The position of the Commission at that time and after the amendment of the Act was that that was not a proper element to be taken into consideration in determining the land value of railroads and as an employee I had to conform to those views in making the findings. When I left the employ of the Commission I was no longer so restricted. The people for whom I performed the work would specifically ask me to make both findings. In my appraisal of respondent's real property I followed the same method used while an employee of the Interstate Commerce Commission as to basic value. I did not include any acquisition cost (T. 1065).

While an employee of the Interstate Commerce Commission the rules of procedure and methods for the appraisal of land were prescribed by the supervisor of land appraisals. I do not think these rules were in existence at the time I entered the employ of the Commission. Then the instructions were in a state of flux and suggestions were being received from appraisers who were engaged in the field work throughout the country as to the manner in which they might be improved. The work was in a formative state and instructions were revised from time to time and finally set up in completed form. I could not state off-

hand when these instructions were first put in a definite pamphlet form. I would not swear that they were not in a definite pamphlet form at the time I entered the employ of the Interstate Commerce Commission. I do not know. I would not swear that any substantial changes have been made in these instructions since the date I went in the employ of the Commission. I don't know (T. 1066). Natu- [fol. 1183] rally I do not know the date any such substantial changes were made. I did not have any part in any substantial change in the instructions. Any change in which I had a part would be a minor change. I do not recall any specific minor changes in which I had a part. I know I made suggestions from time to time when asked for them but I would not recall at this time what they were ~~or when~~ they were made (T. 1067).

While in the employ of the Commission, I testified in proceedings before the Commission, in some instances testifying in defense of valuations previously placed by me as a result of my own investigation and in some instances upon the field investigations of one or more parties other than myself. Before I had the formal title of assistant supervisor of land appraisals, I performed the duties of assistant supervisor of land appraisals for some time and was known as assistant to the supervisor of land appraisals in the organization. That was some time after I returned to the service of the Commission in 1920 (T. 1068). It was possibly around 1923 or 1924. I cannot recall whether I ever testified before the Commission in respect to a land appraisal, the field investigation of which had been made by some other employee or employees of the Commission, before the time I became acting first assistant to the supervisor of land appraisals. Maybe I have and maybe I have not. I couldn't state, I don't know. It would not have been a particularly unusual situation if I had, according to the practice. I was not first assistant supervisor, there was one other and he outranked me while I was there. There were two assistant supervisors, the other was A. B. Manly, the present supervisor (T. 1069). While I was acting assistant Mr. Manly was assistant. It is not an unusual practice for some of the appraisers of the land section of the Interstate Commerce Commission to testify from time to time before the Com-

[fol. 1184] mission about appraisals in which some other employee did the field investigation. I did that from time to time. In testifying I did not testify that the values fixed by the appraisal were my own individual values. They were the appraiser's value and I concurred in the finding (T. 1070). In each and every instance I presented a concurrence to the value fixed by the field investigator. I don't recall right now that I ever differed from the man who had made the field investigation. It is possible that I did sometimes. In such instances that I testified and another employee had performed the field investigation, I did not always visit the property being appraised. In most of the cases where I testified on a specific valuation, I generally made a point, if possible, to see the property. Now, I know that I didn't see all the property about which I testified at hearings but there were a large number of cases where I did. There were probably also a large number where I did not. Even in cases where I visited the property it probably was not always possible for me to visit each and every portion of it (T. 1071). In those instances where I testified, based upon field investigation of another employee, I based my independent and concurring opinion upon facts gathered in the field by the other employee and very often upon additional facts presented by the carrier. There probably were instances where it was solely upon facts gathered by this other employee. I don't know whether my opinion would have been the same or different had I done the field work myself. It might have been different and it might not, I couldn't say. There would be no way to tell. I think the best illustration of that is that on occasions when I did review the work of some other man and went out in the field we made changes in the original appraisal so that it might be, in some instances, if I had gone over the property myself and seen it and gathered some additional data, I might have [fol. 1185] reached a different conclusion. Some of those changes would be material (T. 1072). To some extent, following the method prescribed by the Interstate Commerce Commission, it depends somewhat upon who gathers the information. Of course the gathering of information in the service of the Interstate Commerce Commission sometimes is restricted by the time element, and the man who spent more time than another, or if a faster worker, might

be able to find more information, or a keener analyst might be able to find more information than one who is not. The human element enters into a thing of that kind and two men from the same organization working under the same instructions might bring in entirely different results. The human element necessarily enters into the analysis of the available information which must be made on the ground and also to the weight that is to be given to each item as viewed on the ground and reflecting local conditions.

In my stockyard appraisals I have not investigated all of the data. Sometimes data have been furnished to me or I have found it in other proceedings which had been presented in the course of a hearing and very often agreed to by the parties to the proceedings and in that instance I took that data and made a verification on the ground myself to satisfy myself as to its existence, location and applicability (T. 1073). Very often I got data in advance of my having seen the property. I personally made the field investigation in respect to these stockyards properties.

I think I have never testified as a land witness or appraiser in any court proceedings involving the value of land. I do not know of any cases before the Interstate Commerce Commission in which in the review of the Federal Court any reference was made to the specific question of land values. To my knowledge the methods and regu- [fol. 1186] lations prescribed by the supervisor of land appraisals of the Interstate Commerce Commission have never been specifically approved by any Federal Court (T. 1074).

Appraisal of Land of Respondent

The first time I ever came to St. Joseph was October 31, 1932, remaining there until the evening of November 14, 1932, about three and one-half weeks. Probably a week would come near to the time I spent in the court house examining records. I don't recall how many days I spent with Messrs. Spratt and Quinn investigating transfers (T. 1075). It was probably about four full working days. In investigating transfers I practically always went with Messrs. Spratt and Quinn. There might have been one or two instances where I interviewed a party separately but I couldn't recall off-hand. I went back to the site of some of these transfers and if the party was there I may

have talked to him about the transfer but I couldn't say definitely but I would say that as a general proposition practically all of the investigation of the transfers that I made in St. Joseph was made in the presence of Messrs. Quinn and Spratt. I don't recall any instance specifically where I went back and talked to one of the parties whom we had interviewed jointly. However, since the appraisal I have talked to one of the parties to some of the transfers which we did not interview jointly because the data in so far as the sale was concerned had been agreed to. I talked to the manager or one of the owners of the Famo Mill to get information from him as to the condition of the property when they bought their assembly down there (T. 1076). After reading certain of the matters presented in briefs in connection with the St. Joseph Belt, since my return to St. Joseph, I have interviewed the manager of [fol. 1187] that property, Mr. Michanek. That was day before yesterday. I think Mr. Priestly and Mr. Michanek are partners. I did not interview Mr. Priestly. I couldn't state in terms of full days how many days I actually spent on the property of Respondent. I was there parts of days from time to time. I was not there every day (T. 1077). Every time I went there I would not stay a full day, some days I stayed there for a full day; others only part of a day. That, of course, applies to all the work I did. Some days in the Court House I only spent a fraction of a day there and a fraction of the day in the yards. I couldn't say in terms of days how much time I spent in obtaining information from bank officials, stockyards officials and packing house officials. The interviews were generally collateral to getting other information and didn't take very long. During the working hours I don't recall any other things I did other than the ones about which I have been interrogated. There was one day, I don't recall whether a working day or not, that I had some business in connection with some of my other work at Washington that I took care of while I was there. It was of a minor nature (T. 1078).

My direct examination, together with Government Exhibit No. 128, fully and correctly sets forth as far as I know the investigation which I made in connection with my appraisal of the land of respondent. Obtaining opinions from local real estate men is one of the requirements

of the method prescribed by the Interstate Commerce Commission which is honored to a considerable extent in the breach. In other words, while the instructions require that, experience has proven that little of assistance was gained from that ordinary type of opinion, that it was picked up collaterally where you could get it and there was no specific stricture on failing to get that sort of [fol. 1188] data. The instructions specifically state that this should be done. To my knowledge that instruction has never been changed (T. 1079). I don't know. I only obtained opinions collaterally in talking to people about data that I was investigating in connection with Mr. Quinn and Mr. Spratt. Occasionally I asked some general opinions about values from the people we interviewed.

I know that the property of respondent was appraised in 1929 by a land appraiser employed by the Department of Agriculture. I couldn't state that I have seen his appraisal. I have read the report, read the proceedings in which the figures the appraiser had found were quoted (T. 1080). I read the document which is called "findings, conclusions and order" issued by the Acting Secretary of Agriculture on July 20, 1931. I read part of the transcript pertaining to the land appraisal. In the findings, conclusion and order I noted that the Secretary fixed the value of the land of respondent in Zone A (T. 1081). He also fixed a unit value for a part of Zone C. I gave some consideration to the previous finding of the Acting Secretary of Agriculture in arriving at my opinion of the value of Zone A, but no weight. In so far as Zone A is concerned, the unit value is neither greater nor less than it would have been had I not read or heard about these findings, conclusion and order. The same thing is true as to Zone C (T. 1082).

Zone A

My appraisal is as of the date of the report, November 14, 1932. Referring to page 1001 of the transcript, where I stated that I made a study of the use of the property, I found that Zone A was the intensively used portion of the stockyards, that all of the major activities, such as the [fol. 1189] (T. 1089) loading and unloading of the livestock, and the weighing of the livestock and the buying and selling and inspecting of it in the pens by traders was done on that site, that the Exchange Building in which the business

activities of an institution like the yards takes place, was located within the zone limits, that the facilities for the temporary yarding of the different classes of stock were principally located in Zone A, although my knowledge of the exact yarding function, of course, is limited and some of the uses of additional land that may be classed as yarding by those who are more intimately familiar with the functions of the yard, might exist to a minor extent on one or two of the other zones. I also found that on that zone was where the stock was trucked in and unloaded and trucked out, such of it as was trucked out. That particular Zone A was one upon which certain of the miscellaneous facilities, such as the storage for water and material yard, and things of that kind were located (T. 1090). I would say that the zone as a whole is intensively used. I do not consider the element of intensity of use in connection with this valuation except in so far as it is impossible to divorce one's mind from what goes on on a property. It is difficult to say that you gave it no consideration. A man's mental processes are affected to some extent by what he sees, but I endeavored not to let the intensity of the use sway me in the conclusion I reached as to value. I tried to find a value which would not reflect any intensity of use. It doesn't exactly follow that any difference in intensity from one period to another would have no effect upon my values for the reason that the intensity of the use of this particular zone is, of course, related to the intensity of use in some of the adjacent and adjoining property, namely, in the activities of the packers, and the fact that business was poor or good, in so far as the activities of the related industries were concerned, which I [fol. 1190] considered to be in existence in the course of making the appraisal, of course, I considered that activity. Well, to some extent, (T. 1091) as I say, it is impossible to divorce from one's mind the intensity of use of this particular site, because of its relationship to the activities in the adjoining property, but the value that I sought to place on it was one divorced from any intensity of use of this specific parcel. I investigated intensity of use in connection with the determination of activity in the abutting properties. In investigating the activity of Armour and Company I would have to investigate the facilities of respondent, because of the fact that the commodity which is handled through the yards finds its way into the abutting developments.

Whether the scale is in one place or another makes a difference in what Armour and Company's site might be worth. If the scale was a long way removed from them and they had to drive their stock a considerable distance, it would have an effect on Armour and Company's site. I wanted to know in a general way what the relationship of these facilities (T. 1092) were to the industrial use of the abutting property. If Armour and Company had to drive their stock from the location of their property great distances, it might have an important effect on the value of their site, and, of course, as a foundation and background for what I thought respondent's lands were worth I was trying to get into my mind the range of values for the abutting and adjacent and adjoining lands. The value of Armour and Company's land was one of the items which I had in mind, the range of values for that sort of an industrial site. The intensity of use of the stockyards land would reflect to some extent to the value of Armour and Company's land. To the extent that it would, I tried to divorce that from my mind as far as it was possible. The intensity of use of Armour and Company's land would reflect to some extent into the values [fol. 1191] of the stockyards land adjacent to it. I did not try to divorce that from my mind (T. 1093). I found a connection between the intensity of use of the land of Armour and Company and the intensity of use of the land of respondent. I tried to divorce it from my mind in determination of values. Of course, as I say, it is next to impossible to divorce two things that are as closely related as that, but nevertheless in reaching my conclusion I attempted to take away any weight which I might give to the actual intensity of use on the site that I was appraising. As I say, it is next to impossible to do that.

I read that formerly livestock arrived at the stockyards in train lots shipped by a single owner in earlier days. I learned that that condition has been rapidly changing. I do not know the extent to which livestock now is on a less than carload basis, but I read and was advised of the general conditions in the method of (T. 1094) shipping stock into the yards both here and at other places. I learned that the number of head owned by a single shipper is substantially less than it used to be (T. 1095). I did not learn whether or not that creates an additional demand for land, assuming the same number of head. In a general way I learned that

it was necessary to keep the ownership separate. Just the extent to which it is necessary I am not advised (T. 1096). If it was kept separate, I do not know whether it would require separate pens. In my investigation I did not learn of any other ways in which it could be kept separate without a separate pen, but I can conceive of ways. I do not know whether it would be practical, as I am not a stockyard operator (T. 1097).

Accessibility

On page 1001 of the transcript I testified that my study included the accessibility of the stockyards from the standpoint of roads and streets. I found that the yards are very [fol. 1192] accessible from the outside areas from the standpoint of highway traffic. When you get within the area of the yards itself, the access is provided through the lands of respondent. The area in Packers Avenue and in Illinois Avenue extended westwardly from the city limits is included within the area which I have appraised in Zone A, and, of course, there is a sacrifice of that area to provide access within the zone limits itself. The general approach from the territory which is tributary to the yards and from a highway standpoint is very good. Respondent has itself provided all the necessary accessibility to the proper conduct of its business, but the facilities for it have been inventoried by the engineer. I couldn't improve that method of accessibility, but I would say that in the determination of value of a (T. 1098) particular gross area I would give consideration to the loss of a portion of that area to provide access. In other words, if the area which is now providing the access within the yards itself were a public thoroughfare, the net units which I have on the property would probably be a little bit greater than they are now, but because I include those street beds within the zone limits, my unit is what it is. The effect of what I have done is equivalent to deducting the value of the streets from the value of the adjoining land. I have given consideration and some weight to any importance that may exist in the fact that the stockyards company itself owns and can control these streets. It did not reflect in an increase in the unit of value. As a matter of fact, it was one of the elements which perhaps weighed a little bit to make a lower value than I found. I think the land of respondent is less valuable because it

owns and can control the use of Illinois Avenue and Packers Avenue (T. 1099). I wouldn't say that it would improve the value of those lands if it dedicated Illinois Avenue and Packers Avenue to public use by formal dedication, but I [fol. 1193] would say that in my opinion the values of adjoining lands would be perhaps a little bit greater, and those values are the ones from which I drew my values for the zone area. I did not value respondent's land for the use to which it is being put. I ignored that. I investigated it only to the extent that I gave weight in what I thought would be the effect on the values of the abutting lands were Illinois Avenue and Packers Avenue public streets (T. 1100). If Illinois Avenue and Packers Avenue were dedicated public streets, I am satisfied that my conclusion as to the value of the abutting lands would have been that they were worth more than I think they are, and by the same token, applying my method of valuing, of drawing the value for Zone A from the abutting lands, it would have been reflected in net areas, of course, which would be smaller than the present area of Zone A at higher units. I think the land of Swift and Company and Armour and Company would be more valuable were Packers Avenue and Illinois Avenue public streets. I wouldn't say, off-hand, that Zone A as a whole would be more valuable. It might be even in total more valuable. It would depend, of course. That presupposes a condition which is more or less speculative, and my judgment is that it would probably have an increasing effect in the values of the abutting lands, and the extent to which such an increase took place, of course, is a matter of conjecture. It might even raise the value of respondent's lands above the present total value in spite of the area being somewhat smaller. I have considered the area upon which Packers Avenue and Illinois Avenue exist as purely private thoroughfares (T. 1101). I have considered that the abutting owners, such as Swift and Company and Armour and Company, make use of those streets subject to the right of respondent to keep them off. If that is not a fact I have worked on a false assumption, except that I know that the [fol. 1194] abutting property owners have the right to use them to the extent that they do. That was apparent to me on the ground, but what their legal rights are I am not aware. I have assumed they have no legal rights in the areas. I have not assumed that the Stock Yards Company

could completely exclude them from those two streets. There may be some circumstances under which they could arrange for the use, but I assumed that it is within the power of the Stock Yards Company to do things to the streets which will make them impassable, to the detriment of Armour and Company and Swift and Company. I made a general investigation to see the trucks of Swift and Company and Armour and Company and the cars of their employees driving down these streets (T. 1102). I did not know that another employee of the Department of Agriculture recommended in this proceeding that those were semi-public streets and one-half of Packers Avenue should be excluded as a public street. The fact that the lands would be excluded from consideration as being used by respondent in its business in a proceeding of this sort would not necessarily change the approach that I had to the problem, but if it would come to pass that those streets could be made into public thoroughfares, such as the law would recognize as a public thoroughfare, then I would say that it would have an effect on respondent's land. I did not know that another witness employed by the Department of Agriculture contended that Armour and Company and Swift and Company have unrestricted use of Packers Avenue. That was contrary to my belief, and my appraisal is based on my personal belief (T. 1103).

I learned that the accessibility of respondent's land to railroad facilities was excellent. I also learned that the accessibility to switching service was excellent.

Some of the statistical information which I gathered came [fol. 1195] after I had filed the report so that it is not all in Government Exhibit No. 128. I kept on getting information after I filed the report with the view that if I developed something that would indicate to me that more complete information would make me change my mind, I would have immediately advised the Secretary of Agriculture that I desired to submit a supplemental finding. However, it did not eventuate. Any additional statistical information I gathered had no effect upon my finding, it corroborated my conclusion. The statistical information which is contained in my report is fairly representative of the information of that type which I gathered as a whole (T. 1104).

In addition to the topographic maps contained in Government Exhibit No. 128 and my use of the hand level, I got ad-

ditional topography maps from the City Hall which had elevations on them and also sewer locations, and I studied those maps. They are different maps from those in my report, but the information on them is substantially the same. The topography map in the exhibit gives about as complete a topography for the area as I could find. I did not personally make a topography survey of the property of the respondent nor of the surrounding land (T. 1105).

The Minnesota Rate Cases to which I referred on page 2 of Government Exhibit No. 128 involved railroad valuation. The method prescribed in pamphlet form by the Interstate Commerce Commission governing land appraisals was not specifically referred to in that case. That case was decided prior to the passage of the Valuation Act. The statement appearing in the first paragraph on page 2 is my opinion that the method which I followed was approved in the Minnesota Rate Cases. It is my construction of the Minnesota Rate Cases. It is my construction of that case [fol. 1196] that I am supposed to eliminate entirely the question as to the specific use to which the property of a railroad is being put. It follows, in my opinion, that that would likewise apply to a stockyards (T. 1106). If that conclusion is wrong, I do not know that the valuation would be wrong. I would have to make a further investigation from other approaches to the value problem. I don't know what the conclusion would be. The value may be right. The approach would be wrong if the interpretation which I have put on the Minnesota Rate Cases is wrong. There is more than one way to approach the value of a given piece of land. One way is to consider its present use or present earning power. I would not state that I know of any other general method which is being practiced by real estate appraisers. If I found that my approach was wrong, I don't know what other approach I would use. It would depend upon what the court said. I would try to follow what the court said (T. 1107). I feel that if the court would pass on this method of appraisal and say that my approach was in error and I should have done otherwise, and stated what I should have done, I certainly would attempt to do what the court laid down as the law.

Similar Adjacent Land

Similar adjacent property is property which is of a like kind as to elements of accessibility, topography and advantage of facilities which have an effect upon value, such as the existence of sewers, water, electricity, and matters of that kind, such properties, of course, as have the same, or as good, or nearly as good trackage, all these elements that go to make up the value of any particular piece of property. That covers similarity of use to the extent that the use is for industrial purposes, residential purposes, commercial purposes, or otherwise. I make a further subdivision of the [fol. 1197] groups, industrial, residential, farming and the like. One property may be a very high class residential property, and another medium grade, and another one poor or low grade, and, in the same way, there are types of industrial property, some heavy, some light industrial, there are other types of industrial property that you might say are quasi-commercial, that is to say, do a more or less commercial or sometimes retail business, incident to manufacturing, so that there (T. 1108) are degrees of use there, where the one general type of industrial, residential or farm land would not cover it in detail. Adjacent property is that property which lies next, the one to another, or nearby, when it is adjoining. Property to be similar adjacent property must be reasonably similar and adjacent. I distinguish between similar adjacent and similar adjoining property. Property which adjoins, of course, immediately abuts, and adjacent property may not in my interpretation of the term abut immediately on another. It would have to be reasonably close. There again it is a question of degree, depending on the nature of the property. A farm a mile away may be reasonably adjacent to another one, but in so far as a residential lot is concerned that distance would be out of the question. Paragraph 2, page 2, of Government Exhibit No. 128, in referring to Florence Addition being similar to portions of respondent's property refers to Zone N (T. 1109). In the same paragraph where I state some consideration was given to industrial lands south of Atchison Street and west of Eleventh Street, I referred to Zones A, B, C and D, and to some extent to N. As far as Zone A is concerned, I could not say off-hand that that is reflected in my later discussion of Zone A in which I referred to transfers in that area. Some of this discussion in detail ties into

a part of the text, and I would have to refer to that to see whether I referred to those particular sales. I do not know [fol. 1198] whether I considered any sales in that section without referring to the report. I cite those sales in respect to Zone A at the bottom of page 22. As to the street car service, it is approximately 20 minutes. I inquired from the conductor there how often he ran and he said about every 20 minutes (T. 1111).

Railroad Facilities

There may be another railroad which uses the tracks of the Union Terminal to reach the St. Joseph Belt, but all those roads which I have cited in discussion of the railroad facilities can reach the St. Joseph Belt Railroad without going over the Union Terminal, unless you would say that the portion of the inter-change of the Missouri Pacific is strictly Union Terminal property. I don't know just what the division of ownership of tracks is. It is my understanding that the Missouri Pacific reaches the stockyards over the south of the yards, near Donavan Station, and is transferred across the tracks of the Burlington on to the Union Terminal tracks in order to get to the St. Joseph Belt. I don't know exactly what the limit of the individual track arrangement is. I did not think it was of any importance to determine that so long as I know they could get in (T. 1112). I don't know how the Missouri Pacific comes from the north (T. 1113). The word "whose" in the seventh line from the bottom of page 8 of Government Exhibit No. 128 refers to the Union Terminal. I was not quite sure from reading the tariffs whether the line haul carriers which happened to use the rails of the Union Terminal absorbed the charges of the Union Terminal. I got the impression that they do, as well as the charges of the St. Joseph Belt (T. 1114). In other words, a shipper that uses those lines to reach the stockyards with his livestock will not have to pay [fol. 1199] anything more than the line haul rate to the stockyards. Whatever the charge from the point of origin to the point of destination is, it includes all the necessary services for getting the stock right to the point to which it is being shipped.

I would not state that there are any industrial tracts in St. Joseph which have any better railroad facilities than the tract occupied by respondent. The nearest L. C. L. freight

depot is that of the St. Joseph Belt, located on the west side of Packers Avenue north of Zone D, near the warehouse. It is an advantage to all industries located in that immediate vicinity (T. 1115). Availability to railroad facilities is of value to industries of the type located within the belt made by the St. Joseph Belt Railway Company, but I do not know that it is of extreme value because such investigation as I made of the general freight situation in St. Joe is that switching charges in St. Joe are generally absorbed by the trunk line carriers. Now, there may be instances where, to get from one location to another within the town, switching charges would have to be paid by the shipper to arrange particularly for a convenient movement that was not called for in the general tariffs, but I wouldn't say that the trackage facilities on the site make it any too great an advantage over the general industrial properties that have trackage in St. Joe. It would be my choice of a location in so far as having the advantages of service right to all the trunk line roads, particularly for certain types of industries, but the extent to which I would consider that it gave it an excessive value, wouldn't be so very great.

I think that I would give that considerable weight in determining whether I would locate an industry there. Of course, I would want to know just what charges there might be for switching for the particular industry which I was going to put there, and satisfy myself that there was not [fol. 1200] likely to be some disturbance about the charges if I located down there (T. 1116).

I looked at the Intra-Terminal Tariffs of the railroads in St. Joseph but I cannot say that I am very familiar with them because I am not a tariff expert. I found the situation to be just as I have described it, that for certain types of movements the charges are absorbed and for other types of movements that call for special services the industry has to pay for the movement within the terminal. I am referring to movements out of the stockyards and into the city, or out of the stockyards area into the city proper. At the stockyards the switching to and from all line haul carriers is absorbed. I do not know what the situation is in other industrial locations not on the St. Joseph Belt with sufficient definiteness to testify. I do not know to what extent the same situation exists. As I say, in reading the tariffs I got the impression the charges were absorbed at

other locations I found for what might be, in part at least (T. 1117) analogous services, but that there were other classes of movement where the charges were not absorbed, and I couldn't differentiate between those right now. I know that livestock is shipped out of the stockyards by rail to some extent. I read the statistics. I know that some of it is shipped out by truck and some by rail, but the shipments out don't begin to be nearly as large as the shipments into the yards. I couldn't state the exact number of cars without reference to the statistics. I learned that the products of the slaughter of livestock go out in substantial volume by rail. It is extremely important to a packing house to have access to all trunk line railroads leading out of the stockyards, or out of the City of St. Joseph. I do not know of any other sizable industrial tract that has the same access to all trunk line railroads which lead into St. Joseph (T. 1118).

[fol. 1201] Highway Facilities

Considering the general highway facilities, I wouldn't say there is any industrial tract in St. Joseph with better access to highway facilities. There may be some smaller industrial tracts which have relatively better access for the size of the tract, but taking the general area into consideration I would say that the access into the stockyards location is as good as any. In view of the importance of trucking, that is quite important. It is equally important to the packing plants. I would say that there is no other location in the vicinity of St. Joseph quite as valuable to packing plants of the size of Swift and Company and Armour and Company (T. 1119).

Topography

The elevation shown on page 11 of Government Exhibit No. 128, line 5, is taken from the small scale topographic map on page 41. If an actual survey revealed it to be 817 feet, I would not still contend that 815 was correct. In other words, I did not go into it in the detail that an actual survey would go into it. The purpose of statting it was to give only the approximate elevation above sea level.

Threat of Floods

On the same page in the last two lines, I refer to a threat of flooding which applies to some extent to the land of respondent in Zones N, C and A. This is shown from the next statement which begins at the bottom of page 11 and ends on the top of page 12 about what happened in 1923. It is my understanding that some portions of the stockyards were flooded or covered by water or they were threatened by flood (T. 1120). The water came down into the general vicinity, and the extent to which it was on any zone, neither the man with whom I discussed the situation [fol. 1202] or any record was available to determine, but I gathered the general situation was that during the time of excessive high water referred to some of the water actually ran over some of the lands of respondent. I got that information in conversation with one of the assistant city engineers. I don't recall his name. Such discussion as I have had, not only in the city engineer's office, but down at the yards, lead me to believe that there must have been some flood at some time or other for I understood from talking to the accountants that one of the reasons why some of the accounting records were not available was because they had been flooded out (T. 1121). I don't know where those records were kept, but even if it was in a basement I gathered the impression that there had been some flood of water down there that was certainly serious. It was earlier than 1923. I do not know what the cause of it was. I have set forth on page 12 the best information that I was able to obtain about the flooding of the stockyards in 1923. I talked to Mr. Black about the question of drainage and I understood that there was at least partial confirmation of what I had heard in the City Hall from Mr. Black, but he was not positive about the condition. I wouldn't state that Mr. Black told me that there was any water on any part of respondent's property in 1923. I discussed the situation with him (T. 1122); I don't know what specific questions I asked him at the time. My sole purpose, of course, was to determine whether or not this Whitehead Creek up there was a threat and I satisfied myself that under circumstances it was. I think it is in times of high water, that is, heavy rainfall. To some extent I took that fact into consideration in making my appraisal of respondent's land. It affected my opinion of

value to some extent, but not very much (T. 1123). I am still sure, as stated on the top of page 12, that about 1923 [fol. 1203] the volume of water from the Whitehead drainage area was of such extent as to change the flow into the direction of the stockyards and across the stockyards area until it found its way into the river by way of Brown's Branch drainage ditch. That was my information. I am still sure that is correct. By saying "across the stockyards", I mean across at least Zones N, C and A. My opinion would be that possibility of bother from overflow of water would be an element to be looked into. According to my investigation, I don't know whether the stockyards has actually been bothered. The answer to that question is that you might even have water and not be bothered. I understand that they had overflow of water (T. 1124).

The danger of water from Contrary Creek applies only to Zones F, G, H, and I. I would not think that this danger has been entirely removed by the construction of the new Brown's Branch drainage ditch in 1923. If there is danger there at any time, the construction of the ditch alone would not remove all the hazards. I went down to the location of the creek in an automobile and have looked at the topographical maps that describe its meanderings. It is generally south of the yards a little over a mile. It flows part of the time northerly, then westerly, then southwesterly. The general direction is northerly. I do not know what it empties into, except looking at maps. I did not see the mouth of the creek, but from the looks of the topographic map, it appears to empty into low swales next to the Missouri River (T. 1125). It is not clear to me just how it finds its way into the river. I have never been to the outlet of the creek. I have only seen it from the maps. The point is that in a very unusual rainfall, and that is the only time in which there would be any possible danger from the creek to any portions of the stockyard land, the volume of [fol. 1204] the water coming down from the watershed might be so great that it would break out of its normal channel before it made its bend to the west and run down across the railroad tracks. That would be up in the upper reaches of the creek (T. 1126). I could not say that the watershed is the same for Brown's Branch and Contrary Creek. Brown's Branch is just a partial drainage ditch

and does not serve nearly the drainage area that Contrary Creek serves. There is a dam in the creek itself which, I take it, would hold up some of the excessive flows of the water so that it would act as a corrective influence. I just went down to see the point at which it crossed the roads down along the Memorial Highway. I noticed swales in the farm land. I do not know that I would consider the high lands dikes. I saw high lands and what looked to me like swales. I did not see dikes or dams 8 or 10 feet high (T. 1127). I understand there was never an overflow of the stockyard land from the Missouri River. I heard that at one time the Kansas City Stockyard was flooded by the Missouri River, and I understand that the flood water did not affect the lands of respondent (T. 1128). I do not know when the Contrary Creek last went over its banks and flooded adjacent property. The discussions I had about it were that it had happened, but how recently I do not know. I gathered that it was earlier than within the last 10 years. I do not know to what extent dikes and drainage ditches in that same locality have been constructed since the last time of a flood of that character.

I gave consideration to the flooding of Whitehead and Contrary, although, as I stated, not very much weight. I gave it some weight.

I stated on page 12 that a 4-foot sewer seems to be stopped up so that water stands on Second Street. That affects the drainage of Zone N to some extent (T. 1129), [fol. 1205] because that sewer runs across parts of Zone N. I felt that the sewer must be stopped up because I was here during several rain storms, and every time I turned down on Second Street, there was a pool of water standing in the road. I felt if the sewer had had proper drainage, it would not stand there. It sometimes stands there as long as 48 hours. That is about a quarter of a mile from Zone N. I do not know if there is any connection between the water I saw standing and this 4-foot sewer but it was in the approximate location of that sewer as shown on the map, and I figured that was where the natural outlet was (T. 1130). I concluded that because that water was standing there, the 4-foot sewer was clogged up and, therefore, had not properly performed its function. I would not say the sewer was not properly draining Zone N, but if the sewer is not kept open, it would affect the draining of Zone

N. If there was no opening in that 4-foot sewer, it would change the conclusion that I have that the sewer was not being kept open and that Zone N was not being properly drained. Generally a sewer drains only such portions of land that have direct connection with it. If Second Street has no connection at all with this 4-foot sewer, I would not expect it to drain Second Street. Because it does not drain Second Street under those circumstances, that would not give any indication as to whether the 4-foot sewer was properly kept up (T. 1131). Generally I considered that Zone N was properly drained and that it appeared that the sewer that drained it was not properly kept up. I would not say that it had any effect upon my consideration of the value of Zone N, except that it was one of the things I was looking into and had in my mind as to a possibility that it might hurt the land. It was not objectionable because it was not manifest that it in any way was hurting the land (T. 1132). It was a possible objectionable feature.

[fol. 1206] Assessments

Referring to the statement on page 13 that assessments are of some worth in disclosing relative values, when I look at the assessments in general and see that one street frontage is assessed materially higher than another, the value of the assessment to an appraiser is that it gives the indication of the assessor that he considers one location more valuable than another, but as to the specific value, that would not follow necessarily. I found that assessments of real estate for taxation purposes in the city of St. Joseph and Buchanan County are no guide to the true values of the real estate, in so far as actual worth is concerned. That is my opinion. It is my opinion that the values put on for taxation purposes are not the true value of the land being taxed (T. 1133). I think the tax values are a sort of a hodge-podge. Sometimes a piece of land may be assessed somewhere near its true value, and another time it may be miles off. Sometimes adjoining properties might be assessed at different valuations. Notwithstanding this, I think to some extent they are of some worth in disclosing relative values. I am taking average conditions. I think that the average assessment on one street and the average assessment on another, when contrasted would give you an indication as

to whether one street frontage was considered more valuable than another. I did not investigate it far enough to find out that perhaps the assessor was entirely wrong on one street (T. 1134). It would be a better guide to go out and look at the general neighborhood. I did not use assessments as a method of disclosing relative values. I make that statement that that is the only possible worth of the assessments, in so far as I looked at them. The statement is made for the purpose of showing why I did not give assessments any weight. I did not use this method of disclosing relative values of different street frontages, refer- [fol. 1207] ring to property in zones 1, 2, and 3. Government Exhibit No. 128 may contain some other statements similar to the one we have just referred to, which I did not use in arriving at my values. Some of these statements, like the statement of assessments, are put in the report as collateral information to show why I did not give them weight, rather than to show I did give them weight (T. 1135). I think that the Secretary could tell from reading the report the ones to which I gave weight. I think generally I emphasized the important ones on direct examination, but there may be some that I overlooked.

Plottage and Assembly

On page 14, by plottage and assembly, I mean by that that if I had considered the value of a zone like Zone A as being composed of small tracts instead of the entire area, that my value would have been lower than it is. In other words, because it is a complete and assembled area, I have placed a higher value on it than I think individual small tracts in the area would command. In assembling certain types of industrial lands and certain types of commercial lands, it is very often the case that the total assembled land will be more valuable than the sum of the small acquisitions.

That is the reason I have included this item of plottage and assembly (T. 1136). It is an element that tends to increase, in my judgment, the value of respondent's land. I considered the element as applicable to individual zones. In other words, Zone A as a whole had a greater value than the sum of dividing it into 10 or 15 smaller tracts. I have no particular percentage which I ascribe to the element of plottage and assembly. I exercised what I think to be my

best judgment. I just consider that the property would be [fol. 1208] worth more money because of this plottage and assembly and weight that, along with the other things I am considering, reach a figure, in my mind, that reflects the total unit value that ought to go onto the site (T. 1137). In my mental processes I would just arrive at the value of the land in Zone A, exclusive of plottage and assembly, and then add another amount to cover this additional item. My method of appraising real estate is not an exact science. It depends very largely upon the opinion and judgment of the man making the appraisal.

Recession in Value

Referring to page 15, Government Exhibit No. 128, where I state that I received certain expressions of opinion as to the extent of the recession of values since 1930. I could not state the persons by name who gave these expressions. In the course of investigation I asked for such expressions from a number of people. Sometimes it was in the presence of Mr. Spratt and Mr. Quinn. It would arise out of investigating a particular transfer, and maybe there would be a query, if the transfer were, we will (T. 1138) say, anywhere back of 1928 or 1929. I would sometimes ask the witness what, in his opinion, we would get for the same land now, or what he would think I should get for that, what he himself would pay. That was chiefly in connection with my investigation of respondent's land and also in connection with such discussions as I had in the assessor's office. I asked the deputy commissioner up there whether there was any recession in value in the neighborhood and got an expression that there was. It was a Mr. Powell. I did not ask him specifically in reference to that portion of respondent's land which lies within the belt made by the St. Joseph Railroad Co. I gave that opinion [fol. 1209] some weight in the formation of a general opinion as to level of values. I did not give it any weight as far as zone A is concerned as an individual zone (T. 1139). By reason of that statement I neither increased nor decreased the unit value in Zone A. My value for Zone A would have been just the same if that statement had not been made. It would apply likewise to all of the zones; that is to say, the weight that I would give to any individual statement, unsupported by any of the rest of the investigation which

I made, would be very little. In other words, I might have omitted talking to any one of these people who gave that expression of opinion, and still reach the same conclusion as to value. If I had omitted the interviews which resulted in the expression of opinion as to the extent of the recession, varying from 25 to 75 per cent below that level of value, referring to 1930, my value in Zone A would have been a little bit greater. I could not state any percentage because I would have to consider that in the light of the information I gathered (T. 1140). The same answer would be true as to each and every zone. In the appraisal of real property I would not place a value upon a property predicated on boom conditions. That would be just the opposite of a depressed condition. Both should be excluded for like reasons. The values I have placed upon respondent's land in Zone A do not reflect a depressed condition in real estate values. They reflect recession. The recession is at least of sufficient extent that I feel that improvement to the levels from which values have fallen is not imminent. There may be some improvement, but I do not believe that retracement in values will be back to the peak levels of value very shortly. By peak levels I do not mean normal (T. 1141) but something higher than normal. I consider that the values in Zone A have receded below normal to a little [fol. 1210] extent, not very far. The period for several years prior to 1930 is what I consider the normal period. This recessed condition is some place between temporary and permanent. In other words, it is going to last a little too long to be called temporary, and probably will not last long enough to be called permanent. I said stagnation of values is evidenced by a cessation of normal transfers of property. I stated there was stagnation of values in the stockyard district and in the city, but not as to the individual zone. I would not say there is a stagnation of values in Zone A, because it is the kind of property that is not in the market (T. 1142).

Sale No. 5

There is one sale within the limit of the belt formed by the St. Joseph Belt Railway Co. that is a bona fide sale. That does not mean that I consider it a normal sale. I consider sale No. 5 a bona fide sale. Sale No. 53-A is a bona fide sale, but I do not consider it normal. I define a bona

fide sale as an actual sale of property for a consideration. A sale that has all the elements of a fair exchange and which should be given full weight in arriving at my values I would call a normal, bona fide sale (T. 1143). I did not find any normal, bona fide sales within the belt, although sale No. 5 was very nearly a normal, bona fide sale. That is the sale from Henry Veeder and wife to the St. Joseph Warehouse & Cold Storage Co. I was aware that there was a relationship between the St. Joseph Stock Yards Company and the St. Joseph Warehouse & Cold Storage Company but I did not know the extent. I would not think it was quite as close as the Stock Yards Company's owning all the stock of the warehouse company. If I found it was that close, I would not say that it was a normal, bona fide sale, although I still think it is very nearly a normal sale (T. 1144). It would be [fol. 1211] of the nature of a sale not at arm's length, or within the family, under the circumstances you state, although my understanding was that it came close to being a sale at arm's length. I treated it as substantially such.

In so far as any changes have been made in the areas of Zones A and B since the preparation of Government Exhibit No. 128, they should be corrected on page 20 of that exhibit (T. 1145). The change of a half acre any way between zones A and B would not affect the unit values materially (T. 1146).

Respondent's Exhibit No. 100 is a correct copy of my contract for the appraisal of the land of respondent and referred to on the flyleaf preceding page 1 of Government Exhibit No. 128, with the exception that the compensation has been deleted (T. 1146).

RESPONDENT'S EXHIBIT No. 100

Contract for Appraisal of Land

This Agreement made as of the date hereinafter noted by and between the United States of America, by the Acting Secretary of Agriculture, party of the first part, and John A. Zelinski, Washington, D. C., party of the second part, WITNESSETH:

Whereas, the party of the first part desires an appraisal of the land occupied by the St. Joseph Stock Yards Company, of South St. Joseph, Missouri, hereinafter called the stockyard company, and certain data regarding the value of land in and near the City of South St. Joseph, Missouri; and

Whereas, the party of the second part has information and access to information regarding this data; and

[fol. 1212] Whereas, the party of the second part through many years of experience is qualified to appraise land and is not now and never has been connected in any way, directly or indirectly, with the stockyard company and is qualified to give an unbiased opinion as to the value of the land;

Therefore, for and in consideration of —— paid by the party of the first part, receipt of which is hereby acknowledged, and other valuable considerations, hereinafter named, the party of the second part agrees to prepare a report based on his knowledge and experience and compiled from his records and those to which he has access, said report to include the description, location, area, consideration, value of revenue stamps, names of owners of property from whom acquired by the stockyard company and property adjacent to and in the vicinity of the stockyards also prices at which land is offered for sale either by the owner or by a real estate dealer, also an estimated value of the improvements on the lands other than those owned by the stockyards contained in the report, together with the net value per square foot of the bare land.

The party of the second part further agrees to include in his report a compilation of the real estate transfers showing description, location, area, consideration, value of revenue stamps and names of parties named in the deeds of the following lands:

1. Land upon which the said stockyards are located in St. Joseph, Missouri.

2. Vacant lands transferred in recent years located adjacent to the stockyards.

3. Lands with improvements transferred in recent years located adjacent to the stockyards.

[fol. 1213] 4. Vacant lands transferred in recent years located in the vicinity of, but not immediately adjacent to, the stockyards.

5. Lands with improvements transferred in recent years located in the vicinity of, but not immediately adjacent to, the stockyards.

6. Any other transfers which in the opinion of the party of the second part may have a material bearing upon the value of the lands of the St. Joseph Stock Yards Company.

7. The party of the second part further agrees that he will retain at his own expense and pay for the services of any St. Joseph abstractor or realtor as the party of the second part may desire for the assisting in the compilation or supporting appraisal data.

It is understood that the party of the second part shall include in his report a detailed statement of the fair present values of the different portions of the bare land exclusive of all improvements owned by the stockyard company.

The party of the second part further agrees to obtain or endeavor to obtain any further information or data which may enable the Department to arrive at the fair value of the bare land owned by the stockyard company.

The party of the second part further agrees to make such additional investigations, studies, and surveys of general real estate values, railroads and other transportation facilities, local economic and industrial conditions and such other factors in and about St. Joseph, Missouri, which may bear upon the general value for industrial or other purposes of the stockyard company's lands, as will enable him to testify, and withstand cross-examination, as [fol. 1214] an expert as to the values of the lands of the St. Joseph Stock Yards Company.

The party of the second part further agrees either to deliver in person or to mail the complete report by six o'clock p. m., November 14, 1932, to John R. Mohler, Chief, Bureau of Animal Industry, Department of Agriculture, Washington, D. C.

The party of the second part further agrees to testify before and present his report to the Secretary of Agriculture, or his representative, at a hearing to be held in St. Joseph, Missouri, to qualify as an expert land appraiser and withstand cross-examination.

The party of the second part further agrees to testify and present his report at subsequent hearings and to again qualify as an expert land appraiser and withstand cross-examination in a Federal Court, if required.

For all this and these services the party of the first part agrees to pay the party of the second part as follows:

For the complete report the sum of —, one-half of which is to be paid within ninety days after receipt of the report by the party of the first part and the balance after the hearing at which testimony is given by the party of the second part before the Secretary of Agriculture, or his representative. In the event that the party of the second part becomes incapacitated or fails to appear, or after appearing fails properly to qualify and/or testify at the hearing before the Secretary of Agriculture, or his representative, then the only compensation to be paid to the party of the second part will be the one-half named above, namely, —, for the complete report. In case no hearing, at which the party of the second part is called upon to appear, is held within one year after receipt of the report, [fol. 1215] the above noted balance shall be paid at the end of one year from date of receipt of the report.

The party of the first part also agrees to pay to the party of the second part in addition to the sum hereinbefore enumerated the sum of — per day for appearance at any and all hearings. This payment will be made within sixty days after such appearance. The term "appearance" as used in the paragraph shall be construed to include and mean each and every day or part thereof necessarily spent in travel to and from the place of hearing and while present thereat by direction of representatives of parties of the first part excluding Sundays and legal holidays.

Should any hearing in this case be held outside of Washington, D. C., necessitating traveling and hotel expenses on the part of the party of the second part, beyond those incurred in the preparation of the initial report, then the party of the first part will pay traveling and hotel expenses in addition to the above per diem fee, in accordance with Standardized Government Travel Regulations.

Signed in duplicate this 3rd day of September, 1932.

United States of America, by (Signed) C. F. Marvin, Acting Secretary of Agriculture. John A. Zelinski, by (Signed) John A. Zelinski, Title.

Referring to page 22 of Government Exhibit No. 128, I made the statement, "there are no sales of strictly similar lands in the vicinity of this zone, etc." That is still my [fol. 1216] opinion. The only strictly similar land is within the belt formed by the St. Joseph Belt Railway Co., and that is what I meant when I used those words "strictly similar lands" on page 22. I could not say to which of these 23 transfers I gave the most consideration in respect to Zone A. I gave more consideration to some than others, and I could probably state the class of those which I gave more consideration to than others, but not which one I gave the most consideration. I gave more consideration to sales like 10 or also called 63, and 11 and 14 and 12, than I did to sales like 6, 7, and 8 (T. 1148); and I also gave more consideration to that type of sale than I did to the leases like No. 19, 20, 21, and 22. That is about the most definite statement I can make. I gave probably a little bit less consideration to transfers 43 to 50 inclusive, 33-X, 34, 35, 38, 39, 40, and 41, than to 10, 11, 12, and 14. I could not state whether I gave more consideration to that group, which lie east of the railroad tracks and in the city limits, than to transfers 6, 7, and 8. Of course, in forming my judgment at the time I had all these data before me, I tried to weigh them relatively, and I would not state that I gave any of the last-mentioned group more weight than the others. Sales 34, 35, 38, 39, 40, and 41 I would consider from the standpoint of whether on a par with the leases, which are Nos. 19, 20, 21, and 22 (T. 1149). I did not give those sales and the leases quite as much consideration as sales 6, 7, and 8. Of course, the reasons for giving consideration to any one sale or the group of sales, and the relative importance of weight is not due to the same factor. One sale or transaction may possess factors which tend to weigh, which that other one does not, and to state just exactly the relationship is a little bit difficult. I cannot state definitely. I made an attempt to weigh one sale against another as to its relative importance when I had [fol. 1217] all the facts before me. I have the facts now, but my reasoning at the time of the making of the appraisal was one of concentration at the moment on the particular task at hand, and the weighing-in process was not interrupted by questioning and matters of that kind. In

other words, I went into a huddle with myself to determine just exactly how much one element weighed, one transfer weighed, and another transfer weighed, and out of that (T. 1150) huddle came to the conclusion that, considering all of these data, certain levels of value appeared to be reasonable to me. To any definite extent I have now forgotten what went through my mind in the course of that huddle. I do not remember my reasoning at the moment (T. 1151). Because of the fact that I am now on the witness stand under cross-examination, I cannot go through the same mental processes right now.

Grain Belt Mills Sales

Sale No. 6, appearing on page 54 of Government Exhibit No. 128, was the first Grain Belt Mills purchase. At that time I understand the tanning company site was used, which is in the vicinity of the Grain Belt Mills and which is marked on one of the maps attached to my exhibit. With the exception of that, there was no development in the tract now occupied by the Grain Belt Mills. It was in the nature of land that had not been used for industrial purposes. It had not been developed (T. 1152). I understand it was substantially level. It had to have certain leveling off done to make it ready for occupancy. It was just in the state that you find lands of that type when there has been no use made of them. Sale No. 7 is also a purchase by the Grain Belt Mills. When I considered the transfer to the Grain Belt Mills I had in [fol. 1218] mind sales 6 and 7 and identified them as one. Sale 7 was made about five years after sale 6 (T. 1153). The land had been developed in the meantime. There were milling improvements on the land covered by sale 6. The second sale was in 1922. Sale 8 is adjacent to sale 7. On page 22, when I referred to sale 6 I also meant to include sales 7 and 8. In sale 8 the Union Terminal Company acquired that tract to straighten out its right of way. It already held certain other lands between Lake Road and the right of way line of the St. Joseph Belt, and all these lands were acquired to give it possession of the land between the road and the St. Joseph Belt right of way (T. 1154). I would presume that this situation had some connection with the construction of the plant of the Grain Belt

Mills. The land covered by sales 6, 7, and 8 as a group does not have as good accessibility to street car and bus service as Zone A, but the former is much poorer. Considering the area of the tract, accessibility to paved highways of the former is very nearly as good. The actual paving of Lake Road with a hard surface stops a little bit before you get to that particular property, but there is a temporary surfacing in the vicinity of the property that is pretty good. It keeps it out of the mud in wet weather. I do not know as that was in existence at the time of the first sale, which is No. 6 (T. 1155). I do not know whether or not the Grain Belt Mills put in that surfacing. I was informed that the surfacing of Lake Road was put in by the industries, but just to the extent to which any one did it, I do not know. I understand the Stewart-Insoboard did some work on improving Lake Road. That was after they purchased their site in 1927 and 1928. The accessibility of the Grain Belt Mills tracts to highways is nearly as good as Zone A. I would say about 80 per cent as good. [fol. 1219] I should think an expenditure of $1500 to $2,000 (T. 1156) would make that access to improved roads as good for that amount of area as Zone A. I am merely taking into consideration the cost of paving the balance of Lake Road with concrete or some similar hard surface. If that were done, the accessibility to highways, in my opinion, would be equally as good as Zone A. I am positive of that and am satisfied of it. I do not think one method of ingress or egress is as good as more than one, but it depends, when it comes to accessibility, on the method of ingress and egress as well as the number of exits and entrances (T. 1157). In that estimate of $1500 for paving, I had in mind paving that portion of Lake Road east to the junction with the concrete. I think there is a little concrete some distance west of Packers Ave. I do not know the exact amount. I arrived at the $1500 by giving consideration to the distance from the existing pavement (T. 1158). I assumed it to be somewhere in the vicinity of 700 or 800 feet. If it were twice that far, it would cost twice that much. I did not assume any specific width. What I had in mind was that a mile of pretty good hard-surfaced road could be put down for $9,000 to $10,000 if you do not make it too wide. Looking at the distance, I thought $1500

would just about do the job. I figured 700 or 800 feet was a certain portion of a mile and took that percentage of $9,000 or $10,000.

I would not say that the Grain Belt Mills tract had railroad and switching facilities quite as good as Zone A, but still very good (T. 1159). The element of plottage and assembly would not enter into the Grain Belt Mills tract to the same extent as in Zone A. It would hardly be present at all in the Grain Belt Mills tract. I do not consider the land covered by the Grain Belt Mills tract to be quite as valuable as Zone A. I have just general figures in mind and consider it less valuable than Zone A but not very [fol. 1220] much less. When I went into this huddle about which I spoke, I went through the mental processes of determining the land value of the two tracts. I was weighing other factors with it at the same time. If the Grain Belt Mills tract were not occupied by the Grain Belt Mills, it might be available for use for a small stockyard (T. 1160). It would be pretty small. It would be at the back door rather than the front door of the packing plants. Intervening would be quite a network of railroad tracks. I do not understand that any one of them is a line haul carrier, unless the Union Terminal is such. Other railroads use those tracks in that section for switching purposes, as I understand. I understand they use them sometimes for handling passenger coaches. I do not know whether passengers are actually moved on it. I understand that at some time or other some of the trunk lines do use the Union Terminal tracks to get to Lake Contrary, or use them for storage of coaches (T. 1161). I do not know just what the arrangement is. I do not know whether there are regular, scheduled passenger trains that pass over that portion of the Union Terminal. A number of railroads intervening between the stockyards and the packing plants would be some hazard. They would either have to build a viaduct or a subway. I do not think that having 4 or 5 railroads running down the middle of Packers Ave. would be such a very great handicap for stockyard use, being that close, because even with the ordinary highway use that is made of Packers Ave., there have been viaducts and runways built under and over the area, and it seems to have had no particular influence in hurting the movement of stock by moving it up and down the viaduct and the runway, as it is now con-

structed, and I see no reason why a similar one could not be constructed over tracks on Packers Ave. (T. 1162). [fol. 1221] From the Grain Belt Mills tract it would be much longer to the packing plants. Zones K, L, and M are substantially immediately adjacent to the Grain Belt Mills tract. Only a small part of M reaches down there, but generally speaking they are just across the road from the Grain Belt Mills tract.

Sale No. 10

Sale No. 10 is one of the sales to which I gave more consideration in respect to Zone A than to some of the others. This is the tract, a portion of which was later leased by the Union Terminal and which leases are covered by sales sheets 19 and 20 (T. 1163). I do not know what expenditures the Union Terminal had to make to get this land in shape to lease, but I figure that there was some expenditure because the topography of the land indicated to me that some work had to be done to prepare it for use. I took that into consideration in determining the weight to be given that sale. I could not specifically state how much money would be spent in that connection. I did not consider that it would cost $7,500. If it did, my estimate would be low to that extent (T. 1164). I do not know the amount of expenditure that was necessary by the lessees. I considered only what appeared to me to be the total expenditure necessary to prepare that site based on what the topography was when I saw it. I cannot state the specific figure for the total expenditure, but in round figures approximately $1,000 an acre would take care of preparing that land for use. If the industry wanted to make a special building up of this site, I would not consider that that was a part of the cost of the land, that is to say, incident to the construction of a certain type of structure, if the industry had to spend money for improvement, I would not consider that [fol. 1222] that was a charge that was applicable to the land. I would say it was rather a charge applicable to the construction of the plant. In some instances filling up land to the level of the street is special construction. It might very well be usable if it was below the street level. To be comparable with land that is up even to street level it would have to be filled to that level. I found portions of Zone A that are used, filled to street level (T. 1165).

I could not state with exactitude that all of them were up to street level, but in general I would say that that is the appearance. In detail I do not know the relative elevation of the tract covered by Sale 10 as compared to Zone A. I know that parts of Sale No. 10 are lower than Zone A. There might be as much as a 3 or 4 foot difference in spots, and then in other spots about 1 foot difference, but I could not state the exact difference in elevation. I did not go into any such close attempt to measure differences. I would be surprised to learn that Zone A is on the average as high as 5 feet above Sale No. 10 (T. 1166). I would not be exactly surprised if the average was somewhere between 4 and 5 feet. It is possible. I would rather be disillusioned, you might say, as to the extent of difference that I thought was there. I knew there was some difference but I did not [illegible] hat it was quite that much (T. 1167). I understand y[illegible] referring to the condition of Sale No. 10 at the time of the sale. In my consideration of Sale No. 10 I did not consider it to be that much below Zone A. I don't know if Sale No. 10 had any railroad facilities at the time of sale. I know that a track was put in there at the time the industries leased the land, or at least the industries made their leases with an understanding they would have trackage. I consider the accessibility of Sale No. 10 as good as Zone A. I am going on the basis that the accessibility via Lake Road for as small a tract of land as [fol. 1223] this is as good as that into Zone A, a large part of the access to which comes right by this tract. A large part of it comes from Illinois Avenue or across the tracks of the railroads and across the tracks of the St. Joseph Belt from Illinois Avenue (T. 1168). It comes across from Missouri Avenue in part also, but it has to cross the tracks of the Belt Railway. The truck-in division is at Missouri Avenue. Exchange Street, in so far as Zone A is concerned, is also separated from the zone by the tracks of the St. Joseph Belt Railway. I do not consider the land covered by Sale No. 10 would be as valuable as Zone A. That sale is immediately adjacent to Zone N. It is just across the road from Zone C, which intervenes between it and the nearest portion of Zone A (T. 1169). That tract is not as accessible to streetcar and bus service as Zone A.

I did not learn that the Grain Belt Mills had to furnish automobile transportation for its employees from the plant

to the streetcar. That would not necessarily have any bearing upon the value of an industrial location. It might be just a service of convenience. If it was necessary to get employees, it would be of some importance.

Sometimes availability only to a stub end is as valuable as availability to railroad tracks which run either way, depending on the general situation. If more than one industry is using the same stub end track, it would not necessarily be inconvenient, depending upon the amount of traffic that is handled (T. 1170). If there was a great deal of traffic, it might be inconvenient.

Larabee Mills Sales

Transfers 11, 12, 13, and 14 all concern the Larabee Mills location. Eleven was the first sale and 14 is the latest. Eleven and 14 are the acquisition of the plant tract. Sale [fol. 1224] No. 12 represents the acquisition by the Union Terminal of slightly over 11 acres which six months later was sold by Sale No. 14 in part to the Larabee Mills. Sale No. 13 is really a financing feature which has no bearing upon the values in this proceeding (T. 1171). It is entitled to no weight. It is quoted to show the continuity of the transfers in the particular area. The most weight was given to Sale No. 14. The Larabee Mills placed improvements of substantial character on this land, such as flour mills and grain elevators. It appears to me that they must have also built railroad tracks on some portions of it because certain of the tracks are right in their own area and, as is usually the case in instances of that kind, the industry has to pay for the construction of tracks that are right on its own area (T. 1172). It was necessary to do some grading before this land could be used. It was necessary to fill the land in part. I do not know the exact extent. From observation I estimated the approximate extent. I figured that if you put an average fill on the land of about two feet, it would take care of all of the necessary grading of the plant. That does not mean to say that that would bring it up to the level of the railroad tracks because that plant functions without being exactly to the level of the yard tracks to the west of it. There is some difference in elevation on the average between the land, under the plant,

and the land under the ties, but the extent of the fill that has been made in there to make the land usable for that particular industry appears to me to be about two feet, on the average (T. 1173). I consider that fact in connection with the weight that should be given to Sales 11 and 14 (T. 1173). If I underestimated the amount of the fill, the weight that I gave the question of fill would be inaccurate to a limited extent only (T. 1174). It would not necessarily be to the extent of the difference between what I [fol. 1225] estimated and what the actual amount of fill was because, in estimating what the value of the filled site was, I don't take any conclusion that I reach in my mind and carry it right over and place it in another place. In other words, a specific piece of information may vary in the derived unit 5 or 10 per cent, and the weight that I give to it when it is not necessarily very large on the specific transaction, wouldn't be affected materially by so much as an error of 5 or 10 per cent in conclusion as to the value of the information that I am considering relevant, so that, while it may affect the finding some, I don't think it would do it seriously. In other words, if the estimate of an average fill of 2 feet on these sales is low, I probably have unconsciously minimized the value in transfer, but, to what extent, I wouldn't know definitely, but it wouldn't be very much. It would depend on how much I underestimated it. In my investigation in Washington I read Mr. Kosters' testimony in Finance Docket No. 3906, Excess Income, St. Joseph Belt Railway Company about the amount of fill that was actually put into these tracts. I don't recall what he said about it, but I had that in mind when I made my (T. 1175) investigation of the particular properties on the ground, and I reached the conclusion that Mr. Kosters' estimate of the fill was a little bit too liberal. I did not know whether or not Mr. Kosters had any connection with putting in that fill. If Mr. Kosters showed me the basis on which he figured the yardage and how he distributed it over the total area, it might change my mind as to whether he was liberal or not, but not just because Mr. Kosters had something to do with the fill, unless he went out and specifically measured it and had quantities for estimate; and the matter would still be estimates of two men who looked at the same piece of property. If he put it in and approved the vouchers for the payment of it, he would have a

[fol. 1226] source of information which I did not have and which would tend to make his answer more accurate (T. 1176). The Larabee Mills purchases, Sales 11 and 14, are not as accessible to streetcar and bus transportation as Zone A. They are a little further removed from streetcar and bus transportation. They are a little bit further removed from improved highways as well. As far as Sale 11 is concerned, Florence Avenue has a fairly hard surface. I would not consider it a bad road. Good highway access is not essential to an industry of the type of the Larabee Mills. At the time of the purchase the railroad facilities were available as they are on any industrial tract or any tract that borders a railroad. The detailed provision of the use of the facilities is something that comes after the purchase of the land (T. 1178). The situation over there is different to the extent that trackage wouldn't be as available in those sales as it is in Zone A. In the Larabee tract it would require, under certain circumstances, the construction of tracks on the land owned by Larabee at their expense. If the business that was likely to be produced by the industry appeared sufficient to justify it, the railroads serving might go in and buy sufficient land to put in a track of their own, at least a lead track of their own. I have known that to happen. Railroads regulated by the Interstate Commerce Commission would not buy a right-of-way inside an industrial tract, but they would buy one right alongside of an industrial tract. In this instance, I don't know if the Union Terminal would have to buy a substantial amount of land (T. 1179). In so far as I know, the Larabee Mills is served by industrial tracks which are owned by them, except that I know, of course, the transfers came from the trustee for the Union Terminal, and I assumed that the matter of trackage arrangements under circumstances of that kind could very easily have been provided for. In so far as I know, the manner [fol. 1227] in which it was provided for was that the Larabee Mills built or paid for the tracks that were on its own property. I am not assuming that the sale price was less because of this added expenditure. I meant that in so far as my provision for access for trackage is concerned that the Union Terminal interests were in a better position to get a price for their land because of the opportunity to get in there with a track than if they had to independ-

ently go out and buy land to get into the tract (T. 1180). By that statement I mean that an industry locating on lands which were coming from a railroad could anticipate getting trackage into the site more readily than if the industry had to go out and purchase the right-of-way to get into it. All other things being equal and I could get along with the existing track of the railroad company and it served my interests, I would probably pay a little bit more for land which had adjacent to it suitable trackage than I would if I had to use part of my own land for the trackage. I would also have to pay the cost of trackage which would be another element. In other words, when a man takes up an industrial location, he necessarily must consider all the costs of finishing his industrial plant to the place where he can use it for the purposes for which he has constructed it, and if he has to build a side track, that is an item of expense (T. 1181). As compared to an identical industrial tract where he did not have to build a side track, there would be a disadvantage of the first over the second in that respect. Of course, very often the industry prefers to have the track on its own land, even though the other is available, for the reason that it gives them a certain control over the use of the track which they couldn't have when restricted so long as the track was solely on the right-of-way of the carrier serving them. I made a general investigation to determine that the respondent gets service right direct from the tracks and in [fol. 1228] part over its own facilities when it comes to loading and unloading. In other words, the service is very direct. The track is not on its own land. It is getting excellent railroad service (T. 1182). I can conceive of conditions where respondent would be bettered if it owned the land under those tracks and also the tracks. My opinion is that they might better themselves by controlling the tracks themselves under circumstances where they could directly dictate the conditions of operation where, when the tracks are independently owned, they have to be, of course, more or less amenable to the wishes of the operators of the railroad. I do not know in what specific respects the ownership and control of those tracks and the land underlying them could improve the present service that respondent is getting (T. 1183). I think the respondent gets all the servive that it needs, but I am not enough of an operator of

railroads or of an industry of this kind, or don't know enough about the operation in detail to be able to state whether or not the service could be improved, even though it is very good. I do not think that the tract occupied by the Larabee Mills would be very attractive for use for stockyards purposes in and of itself. If it was used, it would have to be used in connection with land to the south and east thereof as a practical matter. The Larabee tract is immediately adjacent to Zone N. It is not immediately adjacent to any other zones. On page 22 I have made no reference to Sales 3 and 4 (T. 1184). That was accidental, because to me the sales were a part of the general group of mill sales the same as Sales 7 and 8 had a relationship to Sale 6. The identification of the big tracts brought with them identification of the others. Sales 3 and 4 are immediately adjacent to the Larabee Mills tract and a little bit to the west of it. The situation in respect to the Larabee Mills tract would be substantially the same as to the [fol. 1229] tract occupied by Sales 3 and 4 (T. 1185). The map upon which the sales are shown, which is Supplemental Map No. 3, does not show the location of each sale with absolute accuracy. The locations are approximate. There are some tracks across the land occupied by Sales 14 and 10 which have been constructed since the map was made. If the same series of questions were asked about Sales 3 and 4 as were asked about the Larabee sales the answers would be substantially the same. There would be possibly one exception and that is that there is no access to a public highway from Sales 3 and 4. That is likewise true of Sale 14, except in connection with Sale No. 11 (T. 1186.) I would consider that the Larabee Mills tract had the element of plottage and assembly to a small extent, but not Sales 3 and 4. The Larabee Mills tract would not have it to the same extent as Zone A.

Sale No. 5

I could not say how much consideration I gave to Sale No. 5. I gave it more than to Sales 6, 7 and 8. I gave it approximately the same weight as Sales 11, 14, 3 and 4. It was considered at the same time, but I could not state definitely just the weighting of the sales now. I gave Sale 5 perhaps the same weight as Sale 10 (T. 1187). I could not state offhand relatively how the weight given

to Sale 5 would compare to the weight given to the group of transfers known as the Famo Mills. I did not consider the Famo Mills transfers at the same time I had Sale No. 5 in my mind, they being in a different location, in the city limits. I was not contrasting the two, so I could not say in so far as the Famo Mills transfers are concerned. I did not know the extent of the relationship existing between the Stock Yards Company and the St. Joseph Warehouse and Cold Storage Company at the time of the sale. I knew there was some relationship. I do not think that [fol. 1230] caused me to lessen the amount of weight I would normally give such a sale. If I had known the full extent of the ownership, it would not have materially changed my mental calculation. I cannot say definitely. Sale No. 5 has no outlet by public roadway. There is a cinder, brick, or dirt drive in back there by which you can reach the parcel (T. 1188). It runs over land of the respondent and also the Belt Railway tracks. In and of itself, as an individual parcel, it has no direct legal access. I took that into consideration in considering this sale. This sale is closest to Zone C. It is also fairly close to Zone D.

Sale No. 53-A

I gave Sale No. 53-A considerable consideration because I thought for a while it might develop that the sale was an indicator of value until I got to the facts surrounding it and satisfied myself that it was not, and stopped giving it any further consideration as an indicator of value. I gave it very little weight. It might have influenced me a trifle, but I would say very little (T. 1189). If I had ignored Sale No. 53-A entirely, my unit price for Zone A would have been the same. In my investigation of Sale No. 53-A I read the testimony of Mr. J. O. Barkley given in May 1925, in Finance Docket No. 3906, Excess Income, St. Joseph Belt Railway Company. I read the testimony and considered it to be the statement of facts as made by Mr. Barkley. I had no reason to believe that Mr. Barkley had not told the truth about the matter. I felt that in the light of my picking up previously of the minutes of the Board of Directors of Swift and Company incident to the transfer of the property, that I got further information on it, and when I got this statement from Mr. Phalp about it, it

clinched my idea of the fact that the tract was not a normal [fol. 1231] transaction. Mr. Barkley stated substantially that this land had originally been transferred to Swift and Company by the stockyards at a very nominal price, with the expectation on the part of the Stock Yards Company that Swift and Company would extend its facilities to use it, and that Swift and Company (T. 1190) decided not to use it and wanted the Stock Yards Company to take it back at what the actual carrying charges had been in the interim. As I understand it from this testimony, the Stock Yards Company did take it back. Mr. Barkley stated: "It was not a straight purchase of property under ordinary normal conditions because we had formerly owned it and transferred it to them at a nominal figure for packing house purposes. In fact, we gave them considerable of the property they occupied in order to get them to expand their facilities and make our stockyards more attractive, thereby increasing the value of the yards and its importance." I did not hear Mr. Barkley make those statements. I know nothing more about it than anybody else who would read that document (T. 1191). As a part of my investigation I had sales that were used in the last hearing of the recapture case involving the St. Joseph Belt Railway Company. That was a group of 53 transactions. I understood that they agreed to use these 53 transfers, but there were other transfers (T. 1193) which included this Transfer No. 53-A. At the time I first picked it up I didn't know they had excluded it because of facts substantially as stated by Mr. Barkley, but found that out subsequently. I first got from the Interstate Commerce Commission photostat copies of the agreed sales. Subsequently I discovered that some of the disagreements arose, in part, out of the treatment of the improvements on the sales, and I asked them to mail me also what they called the discards, and, in the interven- [fol. 1232] ing time, I had picked up this transfer, and, subsequent to picking up this transfer, I got hold of the discards and 53-A was in those (T. 1195). I only know the purpose of the resolution on pages 102, 103, and 104 of Government Exhibit No. 128 as I can interpret it from the copy of the resolution. I would state that the purpose was to get the authority of the company to get the property released from under the mortgage. I have no further information other than is shown in the copy of the resolu-

tion (T. 1196). I haven't seen the Swift and Company indenture, but I do know it is a practice to write into the trust indenture the requirements that before any of the property classified as part of the general mortgage can be transferred, that the Directors will take appropriate action to notify the trustees of the circumstances under which the transfer is being made, and very often there is a provision that the proceeds from the transfer will be deposited with the trustee under the mortgage to protect the interest of the bondholders. Either that or additional property is pledged. I assumed that this was the purpose for which the resolution was made.

Famo Feed Milling Company Sales

Sales 34, 35, 38, 39, 40, and 41 represent the acquisition by the Famo Feed Milling Company of its tracts. In considering them, I gave no weight to the analysis of the purchases contained on the bottom of Sales Sheet 40 (T. 1197). I considered it but did not give it any weight except that I considered the $621 spent for fill in the effect that it had on the transfers themselves. I gave no weight to the appraisal of the combined tract (T. 1198). I investigated the statement on Sales Sheet No. 34 reading "This land was swampy and had to be filled." I understand that is a correct statement. The tract as filled when I saw it last is perhaps 1½ to 2 feet above the land to the east of it and [fol. 1233] a matter of 3½ feet below the Rock Island right-of-way. The Rock Island right-of-way is substantially the same grade as Cherokee Street and Illinois Avenue at the intersections of the street. The Rock Island right-of-way at the point immediately abutting the sale, that is, the lands of the Rock Island right-of-way are at the same grade as the sale, because the lands of both the right-of-way and the sale have been filled at the same time, but the main line of the Rock Island, the main line track is the one which is about 3 to 3½ feet above the present level of the sale and also above the present level of that portion of the Rock Island right-of-way which lies between its main track and the western boundary of the sale. The main line of the Rock Island at the nearest point to Sale 34 is substantially on the same level as the main line of the Rock Island at Cherokee and Illinois Avenue, which streets are at approximately the same level as the Rock Island track. That por-

tion of the Famo Feed Mills tract which fronts on Cherokee Street is substantially 3 to 3½ feet higher than Sale No. 34 as I saw it. There had been some filling already done on Sale No. 34 when I saw it. To a considerable extent the same situation is true in respect to Sale 35, but not so much. Sale 35 is a little higher than 34. The title of the Famo Feed Milling Company describes about as well as I can the type of business it does, handling feeds, and in addition some coal (T. 1200). They manufacture feed and sell it to people who are feeding livestock of various types.

Residential Sales

By the statement on page 22 of Government Exhibit No. 128 reading as follows "For comparative purposes as to an alternate utility, other than industrial, which might be made of the property, the residential sales in St. George's [fol. 1234] Addition and South St. Joseph Town Company's Second and Third Addition, were given study" I mean by that statement that if an investigation of these residential sales had developed the fact that residential values were sufficiently high enough in this territory to overcome the industrial value, that is to say, in seeking the highest utility to which the property could be put and the value for that utility, I sought to determine whether, by any chance, residential values were so high that it might be possible to develop portions of the zone into a residential subdivision, and had I found that such a development were likely to produce a higher value, I would have given that weight. I did not find that and therefore gave no weight to these residential sales (T. 1201).

Sale No. 22

I did not give a great deal of weight to the lease covered by sales sheet 22 in determining the value of the zone as a whole for the reason that it was a small tract devoted to a use which could get along on a limited area, and I felt that that sort of transaction was not a good indicator of value for a large industrial tract such as Zone A. All transactions of that size and which were on property devoted to a special use that I considered wouldn't be a general use for the area under appraisal, I gave proportionately little weight. That piece of property is immediately adjacent to but across the tracks of the St. Joseph Belt Railway

from one end of Zone A in close proximity to the sheep truck-in division. It is closer to Zone A than any of the other transactions I have listed.

Referring to the statement on page 22 of Government Exhibit 128 in reference to the district located south of Atchison Street and west of 11th Street, I did not give [fol. 1235] very much weight to any of the transfers there listed. They would not tend to decrease the value for Zone A which I otherwise would have found. It probably did not affect the value either way but if anything it may have tended to increase it a little bit. Those transfers are a mile and a quarter from Zone A (T. 1202).

Distinct Industrial District

I consider the stockyards district a distinct industrial district. That district is not bounded by the St. Joseph Belt Railway Company. The stockyards district which I consider to be a distinct industrial district is south from Florence Street and west of Lake Avenue and north of Alabama Street. I consider the milling interests, such as the St. Joseph Public Elevator, Larabee Mills, Grain Belt Mills, are a part of the industrial district known as the stockyards district. I do not consider that the Famo Feed Milling Company is a part of the industrial district but of the stockyards district. By the stockyards district I mean the area which is largely under the influence of the stockyards activity and it does not mean the stockyards activity alone (T. 1203). In the definition which I gave of the distinct industrial district I went over to Lake Avenue which would include the tract occupied by the Famo Feed Milling Company, the retail district at the entrance to the stockyards on Illinois Avenue, the Missouri Serum Company and the Ehrlich Manufacturing Company.

Recession in Values

Referring to the statement on page 16, "The extent to which the recession is present in each zone from these earlier levels varies and will be commented upon in the [fol. 1236] analysis of some of the supporting data in the zone discussions," I did not discuss that recession in connection with Zone A, but in some of the sales supporting, where it appeared that the transaction was a foreclosure or a distress sale, I mentioned it. That is what I mean by

that statement, that, in discussing, in looking at the sales data, where the supporting data showed that it was a transfer which was the effect of the depression, mention is made of the fact that it was a distress sale (T. 1204). In the transfers listed on page 22 and referred to by number, I probably do not have any comments in that respect but I mean by that, those sales of residential property particularly that I considered and didn't give weight, that you will find on those, that from time to time they were indicated as distress sales and for that reason I did not consider them indicators of value, even of that particular utility. The statement referred to does not apply to any of the transfers which I have listed by number on page 22.

Sale No. 54

I gave some weight to sale 54. I gave some weight to the original lease part of sale 54. I did not give any weight to the later lease of January 1, 1929 (T. 1205). At the time of the sale of the right-of-way to the Belt, it was paying rental on the basis of the later lease of January 1, 1929, which figures approximately 30 cents a square foot. I did not know how the valuation in that later lease was fixed. On direct examination I gave my rule as to the weight that should be given to transactions between a parent and a subsidiary corporation in connection with real estate which is on page 1017 of the transcript.

[fol. 1237] City Property

Sales 43 to 50, inclusive, represent city property on Illinois Avenue and Cherokee Street. I gave these transfers very little weight in arriving at the composite value of Zone A, but I did consider them and for a while weighted what effect they might have on a part of Zone A if I were sub-zoning it (T. 1206). That would be the part that fronts on Illinois Avenue, extended across the tracks (T. 1207). I discarded that idea. As I discarded it I did not completely discard giving weight to these transfers because I felt they deserved a little weight at least in considering the possibilities of the land, in the event the stockyards operations were not on it. I do not believe I could say how much it tended to increase my unit value for Zone A. I think it tended to increase it a slight amount. The tracts covered

by sales 43 to 50, inclusive, do not have railroad trackage and probably could not get it except at an inordinate expense. The desirability for retail use makes the values on Cherokee Street and Illinois Avenue (T. 1208). The stockyards and packing houses have something to do with it. I would say (the existence of the packing houses and the stockyards are responsible for a large portion of it. It might be that there would be some retail developments there of a minor nature, even though the stockyards and packing houses were not there, but I think that the principal reason for the existence of the retail business is on account of the existence of the stockyards and packing houses. I learned that formerly the Exchange Building was down at the Missouri Avenue entrance to the stockyards and I know what happened to that section of the city when the Exchange Building was moved to Illinois Avenue. I understand there was quite a flourishing retail section on Missouri Avenue at the time the Exchange Building was [fol. 1238] down there. When the Exchange Building was moved that activity largely dissipated and moved down onto Cherokee and Illinois Avenue (T. 1209).

Missouri Serum Company Sales

Sales 32 and 33 represent the acquisition by the Missouri Serum Company, 33 being the first acquisition and 32 a later acquisition of an adjoining piece. On page 22 of Government Exhibit 128 when I mentioned 33-X, I mean sales 32 and 33. Neither of these tracts have trackage. A serum plant is located thereon manufacturing serums for livestock. I would assume it was serum like the Anchor Serum Company only on a smaller scale (T. 1210). The Missouri Serum Company tract does not possess the elements of plottage and assembly. I think the Famo Feed Milling Company tract does. I would say it possesses that element to a greater extent than Zone A, for that size of tract. We are comparing tracts of great divergence in size, but proportionately for the size of the tract, I would say that the Famo Mills sales tract possesses the element of plottage to a greater extent than the stockyards tract in Zone A. I did not give the Famo Feed Milling Company sales a great deal of weight in valuing Zone A. I perhaps gave even less weight to the Missouri Serum Company sales.

Sale No. 55—Sale of Right of Way of Belt Railway

I did not give any weight to sale 55 (T. 1211). Morton O. Cooper mentioned on page 113 is one of the counsel here in the case for the Department. He made the investigation reported on pages 112 and 113. In connection with this sale I learned that the Bureau of Internal Revenue accepted [fol. 1239] the Stock Yards Company's statement that it had received $1,020,499.05 for the land it sold the St. Joseph Belt (T. 1212). From reading the memorandum I would take it that the sole difference between the Bureau of Internal Revenue and the Stock Yards Company was the value of the land, capital stock, surplus, etc. as of March 1, 1913. As far as I can see that was the sole subject of the compromise. Had I considered sale 55 to be what I call a normal bona fide transaction, I would have arrived at a somewhat greater unit value for Zone A. That would also apply to any other zones which are adjacent to the property conveyed to the St. Joseph Belt (T. 1213). The land comprising the right-of-way of the St. Joseph Belt Railway Company is not exactly similar land to Zone A but is adjacent. That portion of it which goes along the east side of respondent's Zone A is used directly in connection with stockyard business. By saying it is not similar, I mean not similar in use and not similar in shape. These are the two principal respects in which the two tracts are dissimilar. When I state the shape was different I referred to the entire tract rather than the portion which abuts Zone A to the east. The shape of the portion of the tract which abuts Zone A on the east is not so dissimilar as the entire tract would be (T. 1214). Its length is equal to the length of Zone A and the only difference is in the width. The contract appearing on pages 110 and 111 had some but only slight bearing upon my determination that no weight should be given to sale 55. It was my understanding that the loading and unloading of livestock was performed by the Stock Yards Company itself for the St. Joseph Belt Railway Company which was under obligation to load and unload livestock (T. 1215). I knew that it was the obligation of the entire group of carriers to perform the service but on which one of them the particular [fol. 1240] duty of loading and unloading would be assigned was a matter amongst themselves and usually the terminal carriers are the ones that perform the loading and unload-

ing. That is true at Omaha and in practically all kinds of traffic the originating carrier, of course, performs the loading and the carrier which moves the commodity to the destination is obligated to provide unloading facilities. At public stockyards the loading and unloading is generally performed by the stockyards company. I do not know in each instance if the compensation for that work and for the use of the facilities is paid by the line haul carriers. I know that the St. Joseph Belt does not have to pay one penny toward the amount which the St. Joseph Stock Yards receives for loading and unloading livestock and for the use of the facilities (T. 1216). I did not know who paid the Stock Yards Company for the use of the facilities, but I knew that the line haul carriers paid it for the loading and unloading. I do not know whether that compensation includes the use of facilities but assume that it did.

Zone A

Referring to my statement on page 1028 that my value was an average value, if I had eliminated the vacant portion of Zone A south of the hog truck division, that portion would have carried a somewhat lower unit price than the average. If I had zoned it so that that tract were an individual zone I think I would have placed a little bit less than $5000 on that tract (T. 1218). That would have the effect of increasing the average unit price to a limited extent of the balance of the tract. The same thing would be true with respect to the unimproved tract in the northwesterly corner of Zone A.

In considering the value of Zone A I knew that the wholesale meat district for St. Joseph is now substantially all across the street from Zone A and gave that consideration [fol. 1241] It tended to slightly increase the value of Zone A. I do not know how long it has been there. I would be willing to accept your statement that it came there since the prior hearing. I do not know myself. I know that the wholesale meat business of both Swift and Armour was not always where it is today (T. 1219). I think it is correct that at the time of the prior hearing it was in the downtown wholesale district of St. Joseph and that it has not been at the yards over a year.

The statement on page 1015 of the transcript about the weight I gave the residential properties is substantially the

same as what I stated about St. George's Addition and other residential transfers where we used them merely to see if residential values would be higher.

Consideration of Present Use of Respondent's Land

In reaching my finding of value I did not consider the present use of Zone A in so far as I was able to divorce myself from that consideration. I did consider the availability of that land to that use. The difference is that if I considered the actual use as is now being made, the values would not necessarily be the same as if the similar use were being made under different arrangements (T. 1220). The reason for that is that if the improvements which are on the property presently were stripped off of the land and a new stockyards development was placed upon the land, it might be that the arrangements for handling the business would be different than they are as at present conducted, and that that would have and could have an effect on the value of the abutting properties, and, to the extent that it would have an effect on the value of the abutting properties, I do not consider that the present use being actually made of the area in question should be given any weight in a find- [fol. 1242] ing of value. The distinction I make between present use and availability for use is that perhaps if the structures were removed and then rebuilt, they might not be rebuilt in the same place. That is not the sole distinction. The other distinction is that if the present structures and improvements were stripped off the property and the lands were still available for stockyard use, as I considered them to be, it is conceivable that there would be some urge to place the stockyard improvement on even other locations than where it exists, outside of the Belt limits even, if the cost of a new development, when you consider the difference in the values of the lands, would economically warrant your moving the present stockyard location outside of the ring of the Belt and constructing an addition,—even to the extent of constructing additional trackage facilities in other locations (T. 1221).

Those are the two distinctions between present use as a stockyards and availability for use as a stockyards. If the stockyards were stripped and then rebuilt there might be influences brought to bear from the packers to get different arrangements than are now there for the handling of live-

stock which might cause the stockyards to be rebuilt differently. I had in mind that if the packing plants were in existence and the stockyards were not the packers would insist on some sort of an arrangement whereby they could get into their sites without any restriction from the owners of the area in Zone A. That is the only thing I can point out off-hand (T. 1222). I have made a conscientious study of this question and considered that point. I cannot point out any other change that I think would be made, but I have a feeling that the situation exists down at the stockyards area, as it does everywhere else, you never quite build a facility or industry to suit you exactly the way you would like to have it. You always make some mistakes that you [fol. 1243] would correct, if you would build it over, and I imagine those would be corrected, if there are any, in the event the plant were rebuilt, and that might have an effect on values of the abutting properties. Changes of that type would probably be minor. In connection with my valuation of stockyards, I have not made any study as to what is a good arrangement of the stockyards in connection with receipts by rail and truck, sale of said receipts, and movement to packing houses except in so far as my limited observation about stockyards operation would enable me to think upon the problem. I am really not qualified to talk about the operations within the yards (T. 1223). The present operation whereby the livestock that comes in by rail comes in on the east and moves through the yard to the packing plants on the west appears to me to be a logical and systematic arrangement. I have nothing I could point out which would illustrate an uneconomic or inefficient construction at the present time. There might be a more efficient reproduction of the stockyards. I do not have in mind that there would be because I don't know. I believe if it were reproduced it would be reproduced as efficiently as possible and if any improvements were possible I think the management would take steps to put them in.

As to my second point that if we reproduced the stockyards might be moved to other areas, I do not know whether that is probable. I think the present situation is the one which would probably be used (T. 1224), but I do feel that in the event the stockyards were reproduced and the cost of reproduction were mounting into high figures, some consideration might be given by a prudent management to where

it might be reproduced more economically, if such a thing were possible, and with large areas of land existing down here in other zones within the ring of the Belt, it is con- [fol. 1244] ceivable to me that some such arrangement might be worked out. As a practical proposition as far as my observation goes, I would not expect the stockyards to be built on Zone F in preference to Zone A, or, at least, in preference to Zones A and B, considered together. I do not feel that there would be any building of stockyards on any of the other zones in preference to Zones A and B, but what I can visualize is an opportunity to save on the investment by building in an alternate location, and that I would feel a study of that kind should be made, on reproduction, to see whether or not it would be possible to reproduce more economically in another location (T. 1225). I have a feeling that we would ultimately get down to the point that it should be built where it now is, but I think consideration should be given to building it at another nearby location (T. 1226). I think that construction would tend to decrease the value of Zone A because I think that were the yards not existent, a closer study would be made of the relative values and cost of reproducing the facilities and where there is a great deal of vacant area outlying, such as there is in the vicinity of the yards, I think that the conclusion would be reached that the lands themselves could not be considered to be so valuable where there is other land that might be available for the same use, as if there were not. In other words, if Zones A and B, for example, had an absolute monopoly of where the location could be, that is, a monopoly to the extent that it was just impossible to put the yards anywhere else, why, then, I think there would be no question but if you had a yard at all that is where it would go. On the other hand, where you have these additional large areas near by, I think that prudence would dictate that you should consider the alternatives. I would not say that Zones A and B have a monopoly of the real honest-to-goodness stockyards location [fol. 1245] in that district, but I say they certainly have a very substantial advantage over any other of the areas that are within the vicinity of the packing houses. The construction of the stockyards to the exclusion of Zones A and B is conjectural but it is one of the elements that I think should be considered (T. 1227). If that is not a proper ele-

ment my answer is wrong. In all these conjectures, to the extent that it is possible to enter such a realm of speculation, I consider that the packing houses and the railroads would remain exactly as they are. I agree that the entire theory of land value, based on the Minnesota Rate Cases, involves a conjecture of what the effect on the land would be if the particular facility you are valuing were not there. That is my idea of what the Minnesota Rate Cases hold. The series of Statements I have just made explain what I mean by the existing vacant land adjacent to Zone A, depressing the value of Zone A. That question takes into consideration the suitability of that vacant land for stockyard use (T. 1228). It takes into consideration that these other outlying areas suffer manifest disabilities for that particular use compared to Zones A and B. Presently their use depends upon use in connection with Zones A and B, but if the present plant of the Stock Yards Company were eliminated I do not know that that would hold to the same extent. It would be a conjecture as to whether it would hold.

That would also take into consideration whether or not it would be necessary to fill some of these adjacent vacant lands and the expense of the fill would be an element. I carried that in the back of my head in connection with the study of the topography and I figured that considerable filling in some spots would have to be made, whereas in others very little (T. 1229). Very little would have to be made in Zones C and N. You wouldn't need so much filling [fol. 1246] although you wouldn't get the property at the same level on a tract like J. Operation of a stockyards on a different level from the adjacent packing plants and railroad facilities would be an additional operating hazard if the difference in elevation were material, but there is no such material difference in elevation in these lands. That would be a problem for the people who would construct the yards to consider. I assume that that question was considered at the time the present stockyards were constructed.

Price at Which Respondent's Land Could Be Sold

In my statement on page 1037 of the transcript wherein I referred to the price at which the individual zones could be marketed, I included Zone A. Under present marketing conditions it is my opinion that Zone A by itself could not

be sold as a whole for $5000 an acre (T. 1230). That is due to the depression. I do not know that you would call that a hypothetical question. It is a question that arises out of a consideration as to whether to put valuations on property at the present time that one would judge properties could be sold for in this time of distress. In that statement I assumed that the land in Zone A was stripped of all the improvements that have been inventoried by the engineer for the Department. Under the same circumstances I do not know whether the Stock Yards Company would sell Zone A for $5000 per acre (T. 1231). The fact that under the situation I have assumed that the land could not be sold for the amount for which I have appraised it would have some weight in my mind in arriving at the value of the land because I put a higher value on the land than I felt it could be marketed for under those conditions. My opinion as to the resale of this land at the present time did not tend to lower my opinion of the appraised value of the land. In appraising land of that character, what [fol. 1247] you could actually sell it for, under present conditions, is a factor to be considered. I think it is an element in the normal appraisal of property. Whether it is to be given weight depends upon the individual situation. In this instance I did not give it any weight (T. 1231-A).

Access to Packing Plants

Referring to my statement on page 1222 of the transcript in reference to what the packers would insist upon as to access to their plants in the event of a reconstruction of the yards, I presume that any of the disabilities which the packers feel they now suffer would be corrected. If the stockyards plant were not in existence and constructed the packers would be in a position to attempt to make arrangements for themselves through other means. I am assuming that the packing plants are in their present location. I am not assuming that respondent does not own the land in Zone A (T. 1233). Under such facts the packers would be in a better position to make a different arrangement for the use of Packers Avenue and Illinois Avenue than at the present by seeking to interest other people in building other yards in other locations in the vicinity. They could do that now but with the present arrangements in existence even though they might not be completely satisfactory, the ex-

pense that might have to be incurred to develop an arrangement would be one of the deterrent factors in going ahead with it at the present time. The expense of rearranging might be different if the present stockyards were to be reconstructed because the method of getting stock in from an alternate location would be one of the costs to be considered as against stripping the present facilities and bringing the stock in as it is now brought in (T. 1234). The cost I mentioned would be considered by the packers, among others, and also by the cost of getting the livestock in in [fol. 1248] so far as the constructor of an alternate yard would be concerned. As to the expense of stripping the yard, if in stripping the yard you strip some of the present facilities for moving stock into the packing plants, but to the extent that those facilities are provided by the Stock Yards Company itself, I assume that from an alternate location the packers could work out a similar arrangement for moving the stock over to their plants at the expense of the contractor of an alternate stockyards (T. 1235). As an expense to the packer, I don't know whether it would be different at the present time without any reconstruction or tomorrow with reconstruction. He might have to rearrange some of his facilities incident to bringing the livestock in from another location. He might have to do that whether the present stockyards is there or not. If he uses another stockyards other than the present one he would have to make some rearrangement today assuming the stockyards is in existence, or tomorrow, assuming it is not in existence. I feel that these packers are interested very much in direct buying, and, in reconstruction of the yards, they might go to some length to do business with the yard from which they could get their stock and be able to get some satisfaction as to buying direct. I think they might attempt to negotiate the same thing now (T. 1236). I do not think the threat of direct buying is the same today as it would be if the stockyards were magically wiped out because with Packers Avenue and Illinois Avenue in control of the Stock Yards Company livestock cannot be moved in by truck. If the Stock Yards Company still owns the land that situation would change through the possibility of getting people to use these alternate locations for a stockyards. Such people might come into the plants of the pack- [fol. 1249] ers from the alternate locations by negotiating for the purchase of some of the existing properties in the

vicinity that are not owned by respondent. I think they could get into the plants other than by land owned by respondent by crossing over some of the lands owned by the railroad companies (T. 1237). I think generally they might have to cross lands of respondent or there may be some way there they could work out an arrangement, for instance, in the location west of Zones K and J, a corner of which comes down to Lake Road. Assuming that there was a yard built in the so-called Fowler tract, the corner is next to two public thoroughfares and the right-of-way of the Union Terminal. A viaduct across that corner and across lands of the Union Terminal and the St. Joseph Belt might reach the packers. I recognize the disability of building a viaduct across the railroad tracks. I do not know to what extent it would necessitate the rearranging of plants of both Swift & Company and Armour & Company (T. 1238). I am speaking, of course, of the influence which acts as a limiting factor on how far a man, or a group, or a company, who feel they have a monopoly can go when they are making a business arrangement. If the proposition would become too burdensome, I can see where the industries affected would seek another way out, and while I am not aware of the expenses of making such an arrangement, I see where it would have to be given consideration, and it might affect the value. If it were not a practical matter it would not be given much consideration and would not be much of a threat. I think the building of a stockyards on the Fowler tract is a possible proposition. I do not know how practical because I am not a stockyards man. I would not say it is practical, I do not know. Of course to the extent that it is practical it would have a bearing on the importance of the threat. I do not know directly whether [fol. 1250] the packers are satisfied at the present time with their methods of ingress and egress (T. 1239). At other yards at which I have worked there is access from public thoroughfares into the packing plants, with the exception of access into Cudahy's plant at Omaha which is in part over a strip owned by the stockyards company, but Swift and Dold and Armour at Omaha have access from public streets and Swift, Armour and Cudahy have access from public streets at Sioux City. I have been at St. Paul. I know the situation there well enough but I did not make a study of the access to the packing plants when I was there. I do not know the situation at Denver and only in a general

way at Chicago. At Chicago the stockyards company owns the streets. I do not know the situation at Fort Worth (T. 1240), nor in detail at East St. Louis National Stock Yards. I have looked at the Kansas City stockyards but could not state as to the ownership of the streets. If as a practical matter the ownership of streets by stockyards companies exists at a substantial number of large public stockyards that would not have a material bearing on the situation because the general situation of which I spoke, the direct buying, may not be worked effectively at the individual yard.

From the point of view of direct buying it is a pretty good thing for the stockyards company to own its streets. For the specific use that is being made of the property it is an element of value that the stockyards company itself own these streets. As a general proposition the threat of direct buying is important right now (T. 1241). I have discussed direct buying at pretty great length with people in the Department as to its history, how it has grown and the general extent of it, and I have read about it in the reports of the Interstate Commerce Commission in the live-[fol. 1251] stock rate cases and things of that kind. That is the source of my information. I have no direct practical knowledge. In my opinion one of the important weapons that the St. Joseph Stock Yards holds to ward off the threat of direct buying is the ownership of Packers and Illinois Avenues within the stockyards. I have no instance in mind when the ownership and control of those two streets within the St. Joseph stockyards has worked to the detriment of the packers.

Relation of Unit Values of Individual Zones

In the valuation of my various zones I did not start with one zone. I fixed a group first, considering all of the zones within the ring of the belt at one time (T. 1241). That is Zones A, B, E and D. I could not state which one of these four I valued first. I just considered them as a group in a group picture, weighing their relative worth and fixed all four of them substantially at one impulse, having considered all the data that affected them. I would not state that I fixed the value of Zone A first. I think the value of Zone A within the ring of the belt was probably the most important thing I was considering at the time I

was debating about the relative worth of the four zones within the belt. The values I fixed for Zones A, B, D and E had an influence on the value I fixed for Zone C, but not materially for Zone F, only to the extent that Zone F was nearby. I considered the transfers I mentioned in connection with Zone A in considering the values on all zones within the ring, and in the same manner. I had them in mind when I was trying to reach a conclusion as to value (T. 1243). To a large extent I also considered the same transfers in fixing the value of Zone C (T. 1244). In valuing Zone C I considered the data and also considered the values I had placed on the zones within the ring, but which weighed more with me I could not state (T. 1245). The [fol. 1252] values I had previously fixed on Zones A, B, D and E probably weighed equally as much as a reconsideration of the entire data in arriving at the value of Zone C. I never stopped considering data at any time; it was in my mind all the time. I could not tell where I left off considering. If there was any duplication in considering data I guess I did plenty of it because I had that in my mind all the time in so far as I could keep it there.

In arriving at the value of Zone E as compared to Zone A, I did not take into consideration the present use of those two tracts. I did take into consideration what I call availability of those two tracts for stockyards use. That likewise applies to Zones B and C as compared to Zone A (T. 1246). Zones B, C, D and E are not used as intensively as A, and I do not know, of course, exactly what stockyard purposes are. On some of these lands there is apparently feeding of livestock and whether that is done as a stockyard facility or as an incident by some one else, I do not know as I am not familiar enough with what the real stockyard use might be considered. In other words if it is a stockyard use it is an incidental use, but the use is not as intensive as in Zone A. In that connection I learned that there were tariffs published for feeding of livestock at certain of the points. I understood that the packers were feeding the stock, but whether that is covered in the tariff I do not know. I am not familiar with the application of those tariffs, so I would not say. As a practical matter Zone A is more available for stockyard purposes than either Zones B, C, D or E (T. 1247). I would not say that it is much more available. I said in connection with the availability of use of Zones B,

C, D and E that they were principally or practically available in connection with Zone A.

The statement on page 24 that Armour and Company's holding pens are in Zone B, I got from discussion with [fol. 1253] people at the yards, possibly Mr. Plumb, although I would not state definitely (T. 1248). I do not know definitely whether part of those pens are in Zone B. I have seen stock in there, and it is fenced off, but to what extent it is Armour's and to what extent it might be others, I do not know (T. 1249).

Redirect examination:

Value of Certain Portions of Various Zones

Referring to page 1 of proposed Government Exhibit No. 128 upon which I set out the respective values I placed on respective zones of respondent's land, I considered all the factors favorable to respondent's land, and all the factors unfavorable to the various sales or transfers shown on Government Exhibit No. 128, which, on cross-examination, I have said that I knew to be true, or assumed to be true, and having so considered all these things, together with all other pertinent factors, giving all facts the weight to which they were entitled, I arrived at the value shown on page 1 of proposed Government Exhibit No. 128 as the result of my judgment so formed (T. 1251). Referring to the vacant land in the southwesterly portion of Zone A, if that land were segregated from the remainder of the zone for valuation purposes, that is, if that had been zoned separately, I would place on that separate portion of the zone, a value of approximately $4,000 per acre. That part of Packers Avenue which lies directly opposite and abutting that vacant land, if I had segregated that as a valuation zone, I would have placed upon it the same unit value, that is, $4,000 per acre (T. 1252).

Assuming that the following areas had been zoned separately for valuation purposes, I would have given the unit values on them as follows: on the land on which is located [fol. 1254] the six pens in the southwesterly part of Zone A, $4,000 per acre; on the portion of Packers Avenue immediately west and adjoining the six-pen area and on the portion of Packers Avenue south of that portion, $4,000

per acre; on the strip of land lying between a tract of land designated as the Hammond Packing Company and a tract designated as Nelson Morris and Company, $4,000 an acre; on Illinois Avenue west of Packers Avenue, $4,500 per acre; on the unimproved tract of land lying in the northwesterly portion of Zone A, which is largely vacant (T. 1253) $4,500 per acre; on that part of Packers Avenue in Zone A, lying north of Illinois Avenue, $4,500 per acre (T. 1254), and would place the same unit value on the extension of Packers Avenue across Zone C to Lake Road (T. 1255). I would not delineate these tracts into sub-zones for valuation purposes for the reason that in considering zones of this kind of property I did not give any consideration to a method of that kind. These sub-zones from the very nature of their description do not lend themselves to a regular zone of value. In other words, the lines of demarcation are not such as I would make in sub-zoning a tract to express distinctions in value. On the small tract of land which is used for the purpose of manure disposal, which is a small portion of Zone N outlined in red, with the remainder outlined in yellow, and referred to previously in the hearing as "red N," I would place a valuation of about $4,000 per acre (T. 1256). The reason why I have placed a valuation of $4,500 per acre on that part of Zone C which is occupied by Packers Avenue, and $4,000 per acre on the zone as a whole, I stated that I would not zone the property the way you have asked the question, but giving, in my own way, on short notice, as to the relative worth of that narrow strip which has public street frontage on one end, and trackage on the other, its depth and size might make it salable in my opinion at [fol. 1255] slightly better than the average for the zone because of its small size there in one piece. The same considerations apply to the higher value which I place on what is designated as "red N" as compared with Zone N as a whole. As to whether a small piece of land, other things being equal, would command a higher unit price than a large piece, an individual piece might do that and very often does, but it depends on the nature of the property and the character of the utility that is to be made of it. As a general rule I would not state that the rule is general, but it often happens that way. It depends on the utility for which the land is being used.

Famo Feed Milling Company Sales

Sales Nos. 34, 35, 38, 41, 39 and 40, which are designated on Supplement Map 3 of Government Exhibit No. 128, constitute the Famo Mills acquisition about which I was questioned on cross-examination (T. 1257). In connection with the Famo Mills transfers I had, of course, already a record about the sale, and I had been over the ground a couple of times prior, but on reading the treatment of the sales in previous valuation proceedings—(T. 1259) I do not wish to depart from anything that was agreed to whatsoever, or elicit any different information from anything that was agreed to on the facts as found. My only purpose in going down to review the ground was to determine supplements to the facts which were already in the agreed statements. The manner of performing some of the work that has been done in the way of value and costs and which were elicited in the sales in prior hearings and to determine where the fill was definitely located, and the other fact which I elicited at the present time was confirmation of record information [fol. 1256] as to the vacation of the streets between the purchases which the owners of the Famo Mills site had the use of. I determined from the owner that the vacation had not cost him anything, he had not paid the city anything, so that, in the treatment of the Famo sale, when question of plottage is discussed, I want to point out that it should be borne in mind that the owners of the property have the use of the vacated streets and alleys. The streets or alleys, or at least portions of what streets or alleys which have been vacated and are now used by the Famo Mills as part of these tracts (T. 1260) are the westerly portion of the east and west alley in Block 20, lying between transaction No. 41 on one side and transactions 39 and 40, the westerly 100 feet of Dakota Avenue, lying between sales 38 and 41, the westerly 125 feet of the east and west alley in Block 18 lying between sales 35 and 38, and the westerly 125 feet of Wyoming Avenue lying between sales 34 and 35. The vacation of those streets and alleys or portions of those streets and alleys caused the various tracts from 34 to 40, inclusive, to become one assembled tract for purposes of use. That gives it a high assembly value with the minimum of cost per unit. I stated on cross-examination, considering the size of the tract, or proportionately at least, I would say that plottage was more important in the group of Famo

Mills sales than in Zone A as an element of value. This site had at the time of purchase a side-track from the (T. 1261) Rock Island which was right against the properties purchased, and the use of that track by the owners is virtually exclusive, and the ingress and egress to the Famo Mills property is aided materially by the use of the portion of the Rock Island right-of-way (T. 1262).

[fol. 1257] Prior Findings of Secretary

As to why I gave no weight to the previous finding of values by the Secretary in this proceeding in the order which has been revoked, one reason was that I wanted to make my own independent study and findings, and the other was that the time which had elapsed in between the two proceedings was sufficient to cause me to believe the conditions had changed materially and that the values would be different.

Accessibility

Zone A as a whole is used intensively. I do not mean that each and every individual portion of it is so used. When I state that the loss of land in a zone to provide accessibility is equivalent to eliminating the value of the streets from the appraisal, I mean that if you had to sacrifice area to provide access that the resulting values, after the access has been provided, would be increased by substantially the value of the streets which have been excluded (T. 1263). The increase in the unit of the net area would be reflected by approximately the value of the area which has been lost, prorated over the area which was served. If land area in a zone has to be eliminated from other uses in order to provide accessibility, it is just as truly excluded from any other use, whether the street be kept private or made public. That is what I meant when I said that it is true in general that ownership and control of streets in a stockyard does not increase the value of the property. If Packers Avenue and Illinois Avenue were public throughfares in the sense that the public generally has the right to use them, which could not be taken away by the Stock Yards Company, I think that would have an effect in increasing the availability of land in Zone A for certain uses (T. 1264). If the streets [fol. 1258] were actually dedicated the land would be available in part at least for some semi-commercial and retail

uses that are now to be found on Illinois Avenue and Cherokee Avenue.

Consideration of Present Use of Respondent's Land

It is my understanding that the Interstate Commerce Commission thinks its rules with respect to land valuation are based on the doctrine of the Minnesota Rate Case. It is my interpretation of the court cases which I have studied that for rate-making purposes it is not proper to consider the earning power of the particular land which is being valued, where the business is subject to investigation (T. 1265). The particular cases that I mentioned, offhand, were the Minnesota Rate Case and the Denver Water Case which were both decided by the United States Supreme Court (T. 1267). The theory is that if you attempt to reflect (T. 1268) the earnings from the site which is under valuation, and is being used for the specific purpose that is being regulated, you get into a vicious circle by reflecting the product of the very rates which you find into the value of the site which is the subject of the inquiry upon which the rates are going to be based.

Railroad Facilities

When I stated that I knew of no other industrial tract in St. Joseph which has equal access to all railroads running out of that city, I referred to Zone A and all of the zones within the ring of the Belt.

Threat of Floods

In particular referring to the statement respecting the water from the Whitehead drainage area at the top of page [fol. 1259] 12 in Government Exhibit No. 128, and to a somewhat similar statement at another place in the exhibit respecting Contrary Creek, I would state that that affected the value I placed on respondent's lands slightly. It was probably somewhat lower, but not materially (T. 1269). There was no substantial difference. If I were to assume from statements made by counsel for respondent, that I was mistaken as to those conditions, I might want to change my valuations slightly, but not substantially. I would want, however, to review the situation in the light of the correct facts. At the time I was studying respondent's land for

the purpose of appraising it and reached my conclusions as to value, especially with respect to Zone A, I was not acquainted with the fact that in the month of May, as a result of a heavy rain, water from one to one and a half feet deep stood for some time in Zone A in front of the Exchange Building (T. 1270). I did not know that as a result of that same rain the bridge across Contrary Creek was washed out and had to be rebuilt. I did not know that every time there is an unusually hard rain, water comes down from the hills east of Zone A and such water and mud is at times deposited on Zone A at Illinois Avenue (T. 1271). I would consider those conditions in the same light as the flood water conditions which I mentioned in Government Exhibit No. 128. Of course, if those conditions were true and cumulative on the type of the information which was adduced by myself and had a tendency to show that the situation was not rare but occasional, the cumulative effect would be greater than just considering one set of circumstances by itself. My conversation with the Assistant City Engineer, G. B. Riddle, led me to believe that the four-foot sewer at Second Street was put down there for the purpose of draining that general area, and he furnished me a map showing the location of the sewer, the general location, and it seemed reasonable to me [fol. 1260] that that is what its purpose was. This morning, I went up to the City Engineer's office again to find out what the facts were about the sewer, and whether Second Street was intended to drain into it, and I was informed by a Mr. Hess, Mr. Riddle not being there, that there was a box culvert from Second Street paving over to a ditch which led to an inlet into the sewer, and he advised me that there are sewer connections down there, and they made recently an investigation with a view to correcting it by putting in a more direct connection into the 48-inch sewer (T. 1272). It would not make any difference in so far as the flood water menace is concerned, whether a sewer had been provided to drain water and ceased to function, or no sewer had ever been provided.

Plottage and Assembly.

The element of assembly value depends upon the use of land by an industry which requires an assembled tract rather than by industries requiring only portions of an assembled

tract. The element of assembly value or plottage is present in a land value when the size of the tract is one which is needed for an industry that can use it in that dimension, that it is necessary for it to have it in that dimension. If an owner of an assembled tract had to disassemble it in order to sell it, it might cause it to lose its assembled value. It would depend upon circumstances.

It is the generally accepted view that the real estate market is stagnant throughout the United States generally (T. 1273). In so far as I was able to determine, the city of St. Joseph and its vicinity is not an exception to that general condition.

[fol. 1261] Sale Nos. 5 and 53-A

Referring to sale Nos. 5 and 53-A, when I said they were both bona fide I meant that they were both actual transfers of title for a consideration, but when I stated that there was some measure of abnormality about it, it has to do with the relation of the parties in part, and also, in so far as sale 5 is concerned, it had to do with the very size of the unit itself being purchased by an already existing industry. When an industry is located on a site and has to purchase adjoining land to add to that site, that places the seller of the adjoining land in a peculiarly advantageous position in the matter of demanding a high price if he is in the position where he controls the direction in which the purchaser can expand. Such purchases generally are made at what are regarded as higher prices than they would be if both parties were entirely free to bargain. There are some instances, of course, where they are made almost on a normal basis (T. 1274).

When I said that sale 5 was very nearly normal I was taking into consideration the narrow width of it and its location with respect to the existing plant of the purchaser. I gave consideration to sale 5 as being a so-called arms-length transaction to the extent that I considered it substantially normal.

Similar Adjacent Land

I do not know whether certain changes in the area of various land zones agreed upon by the engineers connected with this proceeding since the proceeding started involved a change of any zone boundary. If those changes did not

involve any change of zone boundary, but were merely a change of computation of areas within the already established boundaries, such changes would not have any effect upon the unit value. It would have an effect upon the [fol. 1262] total value. It would be a mere matter of mathematical computation (T. 1275).

When I stated that the only strictly similar land to Zone A was within the ring of the Belt Railroad I meant land which is so situated as to access and trackage and general grade or level as to be similar to the zones under valuation. In other words, the only land that is strictly similar from all those standpoints is within the ring of the Belt. By access I mean approach to the area, that is, the entire area within the ring of the Belt from outside highways and from railroad connections (T. 1276). That does not mean that lands outside of the ring of the Belt Railroad are not sufficiently comparable to those within to enable the making of comparisons between the two for the purposes of valuation, if you give consideration to the relative advantages and disadvantages of the respective parcels of land. I gave that consideration.

There is a public street or road abutting on two sides of the Grain Belt Mills site (T. 1277), and that is usable and used daily by the public. The Grain Belt Mills site is 200 feet deep from the public road, and the farthest distance from the road on either side, therefore, would be 200 feet. The most distant part of the Larabee Mills site would be approximately 2,000 feet from the highway or road or street. There is not a publicly dedicated street which touches Zone A on respondent's land at any point. As I explained the sale of the Belt Railroad right-of-way carried with it certain reservations for crossing at Illinois Avenue and the other places where the railroad crosses the street beds which are owned by the Stock Yards Company. Plus those easements you can get to the public street. The public streets which run to the easements across the St. Joseph Belt Railway right-of-way are Illinois Avenue and the projection of it westerly after it is intersected by Cherokee Street (T. 1278), Missouri Ave- [fol. 1263] nue, and Packers Avenue through Zone C to Lake Road. Exchange Street does not directly go to Zone A. You would have to go either by way of Lake Road and around, or else by way of Missouri Avenue. Ex-

change Street runs into Missouri Avenue by way of the Missouri Avenue crossing of the Belt Railway. From the standpoint of accessibility it would not make any difference whether Exchange Street touches the stockyards, or at least the extension of Exchange Street, over the Belt line right-of-way, but not as a public street touches the stockyards Zone A near Missouri Avenue, or near the extension of Missouri Avenue over the Belt line right-of-way runs into that extension of Missouri Avenue. By that I mean that so long as they can get in over the Belt right-of-way (T. 1279) it does not make any difference whether they do it by going down to Missouri Avenue or straight across on a drive. That is just an additional access and the geographical method of getting in would not be so controlling so long as it is possible to get in. It is a fact that respondent has to provide ways to Zone A by reserving easements over the right-of-way of the Belt Railroad. There is access into Zone A from Lake Road by way of Packers Avenue, but that, of course, would involve crossing the Belt Line Railroad at two points which would involve reserving of easements at those points. If you considered the public streets at Illinois and Missouri and even Exchange Avenue and the extension of those public streets by easements over the Belt Line right-of-way as all being public streets, it would still be true that the access to Zone A is by streets that run to a dead end on the boundary of Zone A. It is true that there are no streets, roads, or public ways which run along any part of the boundary of Zone A (T. 1280). It is true, with respect to Packers Avenue, that respondent has to provide a way across its own land [fol. 1264] on the right-of-way of the Belt Line Railroad in order to get from a public street into Zone A. It is true that respondent has to provide streets within the boundary of Zone A to make that zone accessible for the purpose for which it is used (T. 1281).

Grain Belt Mills Sales

I do not regard the lands shown as sales 6, 7 and 8 indicated on supplemental map 3 of Government Exhibit No. 128, as being as valuable as the lands in respondent Zone A. Referring to sale sheet 6, the unit price for that sale is $2,660 per acre, and the unit price of sale 7 is $3,676 per acre (T. 1282); and the unit price of sale 8 is

$5,256 per acre. I considered all three sales together in their relationship upon my valuation as found for Zone A. Sales 6, 7 and 8 include the Grain Belt Mills site. The Grain Belt Mills site proper is covered by 6 and 7, and 7 is a part of what was sale 8. That site has all the railroad and switching facilities it needs. I would not say that Zone A of respondent's land has any more railroad and switching facilities than it needs. It does not follow that both need the same amount. I would think that respondent needs more (T. 1283). I stated that the Grain Belt Mills site might be used for a very small stockyard. That is because of the small size of the tract of land. If it were taken in conjunction with the surrounding land it would be available for a larger stockyard. That is assuming that the present improvements were not on that site, and I am speaking of the land itself. I think the Grain Belt Mills tract is more valuable than Zones J, K, L and M which lie near it. That is because of its better proportionate accessibility, and because of its trackage, whereas Zones J, K, L and M would have only limited accessibility to trackage, in the beginning at least, and topographically the lands in the Grain Belt [fol. 1265] Mills sale are superior to the lands in the zones mentioned (T. 1284).

Topography

When I was cross-examined relative to whether or not the land of Zone A was up to street level, the streets I referred to were Illinois Avenue and Packers Avenue within the area of Zone A. I was not trying to express an opinion whether Zone A is up to the level of Illinois Avenue in the city of St. Joseph. The values I placed on Zone A were on the assumption that the zone is up to the level of those parts of Illinois and Packers Avenues that lie within the zone. There may be little minor places where the zone is not quite up to the level, but taking it as a whole I would say the zone is up to street level and for valuation purposes I considered it as being up to the street level (T. 1285). Relative to the Grain Belt Mill Company providing automobile transportation of its employees, I would think today that they would hardly need to do it, although it may be so. I do not know what they did have to do in pro-

viding transportation in the past. There is a great deal of unemployment today.

Larabee Mills Sales

Sale 13 should be given no weight. It was picked up in connection with the other Larabee sales, and was the financing arrangement that was covered by that transaction. Sales 11, 12, 13 and 14, pages 59 to 62, both inclusive, on each of those sheets there is an entry date. That refers to the date of conveyance. That is the date of the deed (T. 1286). With reference to sales 11 and 14, the Larabee Mills site, in studying and considering and weighing that sale in connection with my valuation, I assumed that the Larabee Mills would have to and did bear [fol. 1266] the expense of providing trackage on its own property at least. I did not know what the fact was. A business having large railroad tonnage very often procures the use of a track where the railroad is in a position to put down a track close by. It often happens that a railroad builds a track on its right-of-way adjacent to an industrial site without any expense to the industry. The business of the Larabee Mills conducted on this land would have a large tonnage (T. 1287). If respondent's Zone A were divided up and sold off in areas similar in size to the area of the Grain Belt Mills Company and the Larabee Mill Company, for use for similar purposes, from observing the method of operation down there I would think that additional trackage would be necessary right on the land of the industry, if in the milling industry. I would think that the site of the Larabee Mills would have possibility for stockyard purposes if it were vacant and taken together with adjoining land. With reference to sales 3 and 4, I do not know whether the tracks were located adjoining that tract at the time the sale took place, but there were tracks close by it as it was a part of the Union Terminal Railroad's holdings.

Sale No. 5

Sale No. 5 does not have any direct legal access to public streets without going over the property of others. In that respect it does not differ from Zone A (T. 1288). I presume that easements are legal access, but in my answer I mean to convey the idea that you cannot get into the

stockyards Zone A without crossing the property of others, but not that you do not have legal access. I realize that the reservations in the conveyance themselves are legal (T. 1289). The owner of tract 5 might acquire an easement over the lands of others just as the owner of Zone A, by the expenditure of money, acquires an easement. I do [fol. 1267] not know of any reason why it could or could not be done.

Zone A

The shape of the Belt Railroad lands renders those lands peculiarly suitable for the railroad company's use. The shape of Zone A has the same bearing on its use (T. 1291). The mere fact of shape alone gives each of these tracts an advantage from the standpoint of value for the specific use to which they are put. In fact, I would not think, on account of shape alone, because Zone A is of one shape and railroad land is of another shape, that Zone A is more valuable or less valuable than the railroad land, but that is a dissimilarity that has to be considered. The lower value which I placed on the vacant area in the southwesterly corner of Zone A was because of its location. The fact that it is vacant did not have any bearing as to value. The same is true as to other vacant lands in Zone A. Local wholesale selling establishments of both Armour and Swift are down in the territory on Packers Avenue now as against having been up town (T. 1292). Those markets are a part of the plants of those packers. I do not know of any other wholesale meat markets adjacent to Zone A. I understand the wholesale meat markets are an incidental operation in connection with the main operation at the packing plants. As far as I know there is not anything about the wholesale marketing of meat at those plants which leads me to believe that there is likely to be a demand for land in that vicinity wherein to locate wholesale meat markets or other wholesale establishments. If there were to be a rearrangement that would encompass the opening of streets in there, that would be one of the things to be considered, and I gave weight to it in finding my [fol. 1268] values (T. 1293).

The stockyard land at Omaha is quite rolling. I heard it stated that the rolling surface permitted not only good drainage but easy cleaning by flushing of those yards. In

the rate proceeding relative to that yard that was urged as an element which increased the value of the land (T. 1294).

Recross-examination:

Appraisal of Land of Respondent

It is approximately correct that I considered all the factors favorable to respondent's land and the unfavorable factors in relation to sales in arriving at the value of all of respondent's land. In doing this it was necessary for me to repeatedly exercise my judgment and form an opinion as to what were favorable factors and what were unfavorable factors. In considering sales it was necessary from time to time for me to exercise my judgment and form an opinion as to the extent to which the tracts covered by those sales were similar or dissimilar to respondent's land. The art of appraisal is not an exact science. Much of it depends upon the judgment of the man making the appraisal. Other things being equal, the better the judgment—the better the job, and the poorer the judgment—the poorer the job. A man with fair judgment and more information might reach just as good a finding as the man with better judgment and less information, or a man with not so good judgment and even more information than a man with the fair judgment (T. 1295). Two men with the same information before them, one having better judgment would naturally reach a more nearly correct answer.

Recession in Values

The following is still my testimony:

"Q. Do you consider that the values in Zone A have re-
[fol. 1269] ceded below normal?

"A. Perhaps to a little extent, not very far.

"Q. And I take it the period for several years prior to 1930 is what you consider the normal period, according to your statement?

"A. Yes." By "perhaps to a little extent" I meant in a small amount. I would not call it very substantial. I could not state any percentage, but it was one of the things that I was weighing and I felt that my finding was less than it would have been if I had made it in the earlier period, but only slightly less (T. 1296).

Grain Belt Mills and Larabee Mills Sales

The Grain Belt tract would not be as adaptable for stockyards use as Zones A, B, E, D or C. I would not say that the Larabee Mills site would be less adaptable to stockyards use than the Grain Belt Mills tract. I stated that the Larabee Mills tract would have possibilities. That expresses its adaptability in the event that Zone A was not so used. I feel with expenditure of money to overcome possibilities, it could be made so usable (T. 1297). How much the expenditure would be is a matter to which I would want to give consideration in determining the relative worth for stockyards use. In considering both the Grain Belt tracts and the Larabee tracts, I considered them as being used in the milling business.

Accessibility

Because the stockyards has access across the right-of-way of the Belt by easement, there is no legal restriction or actual restriction that would hamper ingress and egress except that it is restricted physically by the passage of trains. That fact is no different from the ordinary situation where a public street crosses a railroad track other than the number of tracks (T. 1298).

[fol. 1270] Topography

The situation at Omaha, where the land was quite rolling, was one of the factors I considered in respect to the topography, having observed the method of cleaning the pens up there by flushing, and it appeared to me to be an advantageous way. I did not decrease the value of respondent's land because it is not rolling, but level. I did not consider the element of rolling terrain to be of particular advantage or disadvantage in a stockyards. The question of topography is one that I consider incident to the specific land and its surroundings and whether it has advantages in its particular situation. In other words, there are advantages to level pieces and advantages to rolling pieces, and that is one thing that I would keep in mind. I do not think that the fact that respondent's land is level is a detriment to it as an operator of a public stockyards. With the expenditure of money the Stock Yards Company could make its stockyards rolling if it so desired (T. 1299). I have an idea it could

have been done with less expense, when it was constructed. Generally, most stockyards are pretty level.

Accessibility

The question of use of streets where the man owning the abutting property also owns the street is not similar to the situation where a subdivider buys an entire tract and has to put in streets. The reason is that the subdivider is naturally cutting his streets for the purpose of sale into a specific kind of utility, whereas, in the case of an industrial assemblage, you are working with reverse english, so to speak, in order to blot out streets which are handicaps to a continuous operation. The effect of the use of street area depends largely [fol. 1271] on the character of utility on the property. The fact that respondent owns Illinois Avenue and Packers Avenue eliminates that particular portion of land for use for pens (T. 1300). Because it had to sacrifice that land for streets has some effect upon the balance of the land. The value of the abutting land would be increased had the streets been open, and there would have been a consequent reflection into the values found for Zone A. That is the same situation which exists where a subdivider, either on an industrial or residential tract, sacrifices certain land for streets, but he changes the utility when he does it. In other words, when the subdivider is doing it he is taking the piece of land, usually farm or suburban land, and the sacrifice of area for streets in his subdivision may change it into a different type of utility and make it available for sale and use of a different type of utility (T. 1301). There is no difference between an industrial subdivision and the situation at the stockyards except that some subdivisions may have more streets than at the stockyards. Where a subdivider had provided street access, you would then have a situation that would be more nearly comparable to the one I am trying to visualize within the ring of the Belt here, where a portion of the area of respondent's land is necessary to provide the access which ordinarily would be provided by the industrial subdivider. The same underlying principle does not apply in a subdivision of residential property, because the amount of accessibility that is necessary from streets is far greater proportionately than in industrial areas. The other distinction is that in the subdivided area it is necessary to provide ratably for a greater portion of improve-

ments within the public thoroughfare itself and those, of course, reflect themselves into the value of the lots after the improvement has been put in (T. 1302). In respect to the [fol. 1272] stockyards, I assumed that the lands were stripped of the improvements because of the fact that the improvements themselves are inventoried by the Department's engineer. In the ordinary industrial subdivision such improvements as paving, sidewalks, and sewer and water within the street limits, are provided and available to the industry, but are provided for by the subdivider. If the subdivider is successful, he gets back in the sale of the land the amount he sacrificed in streets and other improvements, plus what he considers a fair additional profit. That is what he attempts to do. That is what I was trying to do when I made my subdivision in Washington. I was trying to get for the land more than the cost of the land plus the land I sacrificed for streets and alleys and plus the expenditures by way of improvements, except I didn't have to sacrifice anything for streets. I was fortunate that they happened to be dedicated when I bought the property (T. 1303). If they had not been dedicated, I would have had to sacrifice them and would have expected to get back, plus a reasonable profit, that sacrifice in each and every sale I made. I have an idea the fact that the streets were already dedicated was reflected in the value of the land when I bought it.

Redirect examination:

Recession Values

I would consider the period prior to the year 1930 nearly normal with respect to land values. That would be true with reference to St. Joseph land and land in the vicinity of St. Joseph. I stated that Zone A had receded only a little in value from normal. The unit value which I have placed on Zone A is close to its value in those normal times (T. 1304). Its distance from it is measured by the little recession that I spoke of.

[fol. 1273] Accessibility

My statement relative to the physical interruption of access to Zone A at the points where these private street or road easements cross the Belt Railroad right-of-way would be due to the running or standing of trains at those points.

Freight trains standing at the point might block the access by the road for varying periods of time. There are very frequently ordinances that limit the time which a crossing may be kept blocked. I do not recall that the easement reserved by the respondent in its conveyance to the Belt Railroad Company contains any such restriction on the Belt Railroad Company (T. 1305).

Recross-examination:

I cannot state that I recall seeing one freight train stand on the tracks of the Belt at any of the crossings where respondent has an easement. All I know is the possibility for it. I considered the possibility of the access being broken that way because I knew that in order to shift on those tracks the trains would certainly have to stop once in a while, even if for limited periods; because there was passage back and forth on the tracks. I considered that stopping of trains on the crossing existed, but I couldn't state that I considered it to any great extent. I considered that trains did stop there, and I presume that in the interest of efficient operation of the two facilities that the time would be shortened as much as possible, but the operating necessitates and, of course, I considered that passage of the trains would hold up ingress and egress periodically (T. 1306). This stopping of trains to which I have referred would hardly decrease the value of respondent's land in Zone A. It was one of the cumulative factors that one con-
[fols. 1274 & 1275] siders, but I wouldn't be able to state that I decreased it on that account alone (T. 1307).

[fol. 1276] Traders and Speculators

H. E. Bufkin, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Government Exhibit No. 122-A, entitled "Statement Showing Livestock Shipped by Dealers from the St. Joseph Stock Yards on consignment to other public markets, Years 1932 and 1931", was prepared by me for the purpose of showing the total number of head of livestock shipped by dealers operating on the St. Joseph market to other mar-

kets for sale. I made an investigation of the records of all the dealers on the St. Joseph Stock Yards and obtained this information during the past week from the books of the dealers by an analysis of sales. Government Exhibit No. 122 shows the purchases by dealers during the year 1932. The purchases for the year 1931 is shown by Mr. Christensen's Exhibit, which is Government Exhibit No. 108 (T. 2385). Government Exhibit No. 122-A can be used together with Government Exhibit Nos. 108, 122, and 121-A, to show the numbers of livestock sold in the respective years 1931 and 1932 by the respective traders on the St. Joseph Stock Yards. These exhibits can be used for obtaining the number of head sold for which no yardage was collected. The audit report, which is Government Exhibit No. 121-A, shows the yardage collected on resales, or by the method of elimination we take the four exhibits together [fol. 1277] and arrive at the number of head sold for which no yardage was collected (T. 2386). In order to ascertain the number of head of livestock of the respective species sold by traders or dealers for the year 1932 and for which no yardage was collected, you would have to use Government Exhibits Nos. 121-B and C, as well as the four exhibits I have mentioned. There is an error on Government Exhibit No. 108, page 65-A. I furnished these figures which were to be used in Mr. Christensen's report and in rechecking the figures which shows on page 65-A total purchases of cattle, January 1 to September 30, 1932, firm No. 6, total 6,507 head. The correct figure for the entire year of 1932 should be 5,169. This correction will eliminate the item of 6,507 from that report. I have not the figure for the nine months to be inserted in this, but, as I say, the correct figure of total purchases for the entire year of 1932 should be 5,169. I rechecked the other figures appearing on page 65-A, 65-B and 65-C (T. 2387), and those figures I found to be correct.

Cross-examination:

When I use the term "dealers" on Government Exhibit No. 122-A, I include what are commonly known as traders and speculators (T. 2388). If for the year 1932 it was desired to find out the number of head of livestock resold by dealers as defined by me upon which no second or re-

yardage was paid, you would go to Government Exhibit Nos. 108 and 122 and ascertain the total purchases by dealers for the year 1932. From that sum of purchases you would deduct the figures shown on Government Exhibit No. 122-A and the remainder would indicate the number of animals which were resold on the St. Joseph market by traders. From Government Exhibit Nos. 121-A, B, and C [fol. 1278] the amount and number of head upon which reyardage was actually paid by these dealers for the year 1932 could be determined. By subtracting the number of head upon which the reyardage was paid from the number I had previously ascertained as having been sold on this market, I could determine the number sold on this market upon which no reyardage was paid (T. 2389). The figures shown on Government Exhibit No. 122-A do not represent any resales on the St. Joseph market. They are similar to the purchases made by any other class of purchasers for shipment elsewhere. The persons listed on Government Exhibit No. 122-A are all dealers. They may operate in some other way, in some other line, but these particular names are registered as dealers. In other words, Corrigan and Symon are also order buyers as well as dealers. I took the figures shown on my exhibits from their trading accounts. That is likewise true of E. E. Vance (T. 2390). According to the method I have just given, I find that the number of head upon which no second or reyardage charge was collected for the year 1932 were: cattle and calves, 56,503; hogs, 155,169; and sheep, 1,469 (T. 2391).

The trading account numbers on Government Exhibits Nos. 108 and 122 indicate the following dealers: No. 1, Corrigan and Symon; No. 7, J. K. Perkins; No. 9, Empire Stock Hog Company; No. 10, W. G. Leighty; No. 24, Midland Stock Hog Company (T. 2447).

[fols. 1279 & 1280] Mr. John J. Bachmann, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

[fol. 1281] Depreciation Reserve

With reference to questions asked me on cross-examination relative to the computation of the sinking fund depre-

ciation reserve and the matter of taxes on the income from that reserve, I stated that there was, or would be, a decrease of 60 or 70 per cent in the total amount provided for under the sinking-fund method, and when I say total I include the annual installment that is set aside by way of principal plus interest (T. 1320). However, the taxes being applied against the income which is to be earned [fol. 1282] would decrease only that income to the extent of 60 to 70 per cent and would in no way affect the installment or principal set aside periodically. The personal property taxes are paid on the basis of the personal property as of June 1 of any particular year. I investigated this matter in the office of the County and City Assessor and found that they used the same base approximately, that is, the same time and the same value, except that respondent does not pay to the city personal property taxes on such personal property not included within the city limits. However, the amount which the company paid on personal property within the city is shown on Government Exhibit No. 121-A, and I believe it has been previously stated in the record. For the county and state the amount which was actually paid was $344.81 (T. 1321). That is the amount for 1931, shown on Statement No. 9, page 370. For 1932 the state and county taxes for personal property are shown on page 361, the total amount is $246.65, made up of the amounts, $8.08 and $238.57. The taxes for 1932, as I understand the County Assessor, are based on the value of the personal property as of June 1, 1931. The balance sheet of the company as of June 1, 1931, shows personal property in the amount of $465,471.11, which amount is possibly subject to an adjustment for the deferred assets, which total $46,186.24. In my opinion that item should not be included, being in the nature of a deferred expense item. With that item out the tax that should be paid, if it is assessed and paid on the full amount of personal property, would be about $8,500. That is at the rate of $2.02 per hundred. I might mention this, which was brought out in my investigation. There is a practical situation which the assessor has to meet which he mentioned to me and that is this. The tax rate for both the city and the county on personal property (T. 1322), if enforced and paid for the [fol. 1283] amount of it, on the full and true value of all personal property, would drive out all savings accounts

from the state. The example which was cited is that a savings account at banks at the present time draws about 3 per cent interest. If the tax were paid as the rates indicate, $1.25 for the city and $2.02 for the county, every individual who has a savings account paying 3 per cent interest would be penalized to the extent of 27 cents for every hundred dollars which he has in such savings account.

The Stock Yards Company, itself, would be penalized on its loan to Swift and Company on which it has received three and four per cent interest. In other words, it would be impossible for these companies to keep this money in the State of Missouri.

To meet this practical situation, the assessor permits individuals and companies to submit their own statement, without further verification on his part. And the tax is based on that statement.

As far as I know, respondent does not pay city personal property taxes on such assets as would result from the investment of its depreciation reserves in securities (T. 1323).

The following balance sheet constitutes the detail supporting my conclusions as to the personal property taxes, omitting the irrelevant portion which relates only to real property taxes:

[fol. 1284]

St. Joseph Stock Yards Company, Balance Sheet, June 1, 1931

Assets:			
Cash on hand		$75.00	
Cash in bank		36,506.99	
Accounts Receivable		17,032.55	
Notes Receivable		6,828.71	
Inventories		19,298.54	
Deferred		46,186.24	
Investments in other Co.'s		12,935.00	
Bond Redemption Fund		49,500.00	
Loans		260,000.00	
Equipment Less Reserve for Depreciation	83,587.00	17,108.08	
(T. 1324).			$465,471.11

I have prepared an adjusted statement for the year 1932 in form comparable to the adjusted statement for the year 1931, as it appears in Government Exhibit No. 124 (T. 1325).

Recross-examination:

Income for Rate-Making Purposes

The following is the table I have prepared for the year 1932 comparable to the items listed on pages 2, 3 and 4 of Government Exhibit No. 124.

[fol. 1285] St. Joseph Stock Yards Co.

Income 1932

	Total	Additions	Include	Exclude
Yardage Received	$415,699.86		$415,699.86	
Gross Hay Sales	63,260.86		63,260.86	
Gross Corn Sales	84,241.54		84,241.54	
Gross Oat Sales	759.74		759.74	
Gross Bedding Sales	7,281.02		7,281.02	
Gross Milled Feed Sales	8,579.54		8,579.54	
Hog Pen Bedding	2,323.95		2,323.95	
Milling Feed Revenue	5,816.04		5,816.04	
Loading & Unloading	19,592.25		19,592.25	
Exch. Bldg.—Office Rents	38,714.50		38,714.50	
Exch. Bldg.—Garage Rents	2,705.73		2,705.73	
Exch. Bldg.—Misc. Revenue	93.53		93.53	
Weighing Cars	3,141.73		3,141.73	
Stock Car Service	52.00		52.00	
Cleaning, Sanding & Disinfecting	82.65		82.65	
Manure Sales	40.01		40.01	
Car Partitions, etc	111.40		111.40	
Immunization Plant	1,649.50		1,649.50	
Truck Washing	733.25		733.25	
Yard Truck Revenue	.....		.....	
Tractor and Trailer	5.00		5.00	
Company Barn	.....		.....	
Estrays	161.89		161.89	
Miscellaneous Income	133.68		133.68	
Yard Leases & Rentals	1,820.18		1,720.22	99.96
Shoes (Employees) Sold	.....		.....	
Feeding Facility Yardage	3,320.75			3,320.75
Rental Feeding Facilities	690.00			690.00
Rent—Tracks & Right-of-Way	.....		.....	
Rent—O. S. R. E. Industries	270.00			270.00
Rent—O. S. S. Y. Industries	2,970.00		1,290.00	1,680.00
Rent—Houses—Outside Acct	47.10			47.10
Rent—Ground—Outside Acct	472.50			472.50
Dipping Income	.....		.....	.....
Water, Elec. & Heat Sales	1,847.33		1,847.33	
Interest	5,101.59			5,101.59
Bad Debts	1.40		1.40	
Sales Pavilion Income	.....		.....	
Misc. O, R. E. Inc.	79.68		79.68	(Water Sales)
Dividends—Casualty Ins	.....	5,500.00	5,500.00	.....
Yardage, Traders Volume	.....		.....	
Farm Operations	115.86			115.86
	$671,988.70	5,500.00	665,618.30	11,797.76

[fol. 1286] St. Joseph Stock Yards Co.

Expenses

Year 1932

	Total	Additions	Include	Exclude
Office & Management Payroll	$ 23,528.68		$ 23,528.68	
Miscl. Adm. Expense	6,071.50		71.50	6,000.00
Officers Travel & Entertainment	681.27		681.27	
Legal & Collection	1,500.00		1,500.00	
Pensions	5,268.74		5,268.74	
Donations & Subscriptions	2,423.46		302.88	2,120.58
Taxes	43,475.84		37,547.60	5,928.24
Depreciation	122,509.92		50,000.00	72,509.92
Insurance	13,701.59		12,324.59	1,377.01
Valuation Hearing	3,082.54			3,082.54
Bond Interest	46,014.02			46,014.02
Bond Discount	4,855.83			4,855.83
Office Rent	1,782.00		1,782.00	
Office Supplies	682.67		682.67	
Office Expense	120.24		120.24	
Office Postage	267.07		267.07	
Telephone & Telegraph	903.31		903.31	
Store House Expense	1,117.60		1,117.60	
Engineering	3.41		3.41	
Fiscal Agents, Registrars, etc	308.12		308.12	
Yard Pay Rolls	119,956.40		119,956.40	
Yard Cleaning & Disinfecting	19,241.37		19,241.37	
Yard Current	3,749.71		3,749.71	
Yard Casualty Insurance	3,528.75		3,528.75	
Estrays	375.07		375.07	
Water, Electricity & Heat	13,164.98		13,164.98	
Company Barn	1,922.28		1,922.28	
Yard Truck	120.47		120.47	
Cost of Hay Sold	26,040.85		26,040.85	
Cost of Corn Sold	52,069.29		52,069.29	
Cost of Oats Sold	416.10		416.10	
Cost of Bedding Sold	2,486.07		2,486.07	
Cost of Milled Feed Sold	4,421.29		4,421.29	
Cost of Hog Pen Bedding	177.96		177.96	
Milling Feed Expense	1,749.70		1,749.70	
Grain Elevator	1,005.70		1,005.70	
Weighing	3,479.28		3,479.28	
Dipping	85.56		85.56	
Car Partitions, etc	19.72		19.72	
Immunization Plant	453.09		453.09	
Repairs—Yard Structures	12,153.72		12,153.72	
Repairs—Water Lines	2,602.90		2,602.90	
Repairs—Sewers	561.76		561.76	
Repairs—Paving	1,074.16		1,074.16	
Repairs—Hay Barns	247.54		247.54	
Repairs—Equipment	319.88		319.88	
	549,721.41		407,833.27	141,888.14
[fol. 1287				
Brt. Forward	549,721.41		407,833.27	141,888.14
Repairs—Outside Property	796.72		412.58	384.04
Repairs—Exchange Bldg.	1,755.35		1,755.35	
Repairs—Feeding Facilities	281.76			281.76
Payroll—Traffic Dept.	6,804.00		6,804.00	
Solicitors Salaries—Traffic Dept.	14,921.00		14,921.00	

St. Joseph Stock Yards Co.

Expenses

Year 1932 (Continued)

	Total	Additions	Include	Exclude
Casualty Insurance—Traffic Dept.	2.28		2.28	
Postage—Traffic Dept.	326.55		326.55	
Printing & Stationery—Traffic Dept.	371.80		371.80	
Telephone & Telegraph—Traffic Dept.	1,681.50		1,681.50	
Misc.—Traffic Dept.	1,168.24		1,168.24	
Solicitor's Expense—Traffic Dept.	14,312.25		14,312.25	
Advertising	3,870.11		3,870.11	
Stock Show	2,764.99		2,764.99	
Exchange Bldg.—Labor	7,029.05		7,029.05	
Exchange Bldg.—Casualty Ins.	265.79		265.79	
Exchange Bldg.—Elec., Water Heat	5,055.68		5,055.68	
Exchange Bldg.—Supplies	1,635.39		1,635.39	
Truck Washing Expense	234.01		234.01	
Sale Pavilion Expense	3.50		3.50	
Misc. O. R. E. Expense	2,334.07			2,334.07
Casualty Ins. O. R. E.	36.96			36.96
Tractor & Trailer Expense	623.93		623.93	
Audit Expense	330.05		330.05	
Repairs—Furn. & Fixt.				
Bad Debts	320.52		320.52	
Cost of Shoes Sold (Employees).				
Bank Exchange				
Manure Sales Expense				
Bond Issue Expense				
Interest				
	616,646.91		471,721.94	144,924.97

[fol. 1288] . Depreciation Reserve

I do not think it could be stated from the figures I gave on re-direct examination that I believe respondent has escaped some personal tax which might legally have been applicable to it. My investigation which I made at that office revealed the identity of no one, neither the identity of myself nor of the Stock Yards Company, because I felt [fol. 1289] that their administrative affairs are their affairs and not mine. But I did want to look into the question that was brought up on my cross-examination about the application of these rates and I view the matter very much in the light that the county assessor views it. It is a practical situation which must be met in a practical way unless very serious harm would be done to companies in the State of Missouri, and in the City of St. Joe, and I have no particular criticism of it. However, as I say, my investigation

was made for the purpose of rebutting, I might say, the apparent criticism which was leveled at the sinking fund method of depreciation in so far as its accumulation is concerned, and I have, as I say, no criticism whatsoever of the company for paying what in their eyes and in the eyes of the county assessor is a reasonable, comparable personal property tax. (T. 1338).

I have never met the newly elected county assessor although I have been told that he was here and have seen the gentleman at this hearing. If in the sinking fund calculation, respondent purchased securities which were not tax exempt, and in filing its return for state and county taxes these securities were listed at their then current value, they would be subject to tax at the rate that is applied to 100 per cent of their assessed value. I would say, in effect, that respondent has been operating its depreciation account on the sinking fund basis. The sinking fund method of depreciation has as its basic idea the investment of the installment provision in something, that something may be stocks, savings accounts, it may be fixed assets; if the company feels that it has no immediate need for that money to replace part of their property, it can well be placed into a fixed asset and the Stock Yards Company apparently has [fols. 1290-1308] followed that idea (T. 1339). The Stock Yards Company has operated on the straight line method of depreciation reserve. However, it has also gone to the stage that in its policy as to provision for depreciation, they have gone into the sinking fund method, informally, in so far that moneys which have been provided for by allowance for depreciation have been invested in the property. An analysis of the balance sheet shows so much money invested in plant and assets of all kinds. From this analysis we cannot come to any other conclusion than that a part of that investment came from moneys provided for by allowance for depreciation. On the hypothesis that the depreciation allowance under the sinking fund method would be used for the purchase of non-tax exempt securities, the tax would be a personal property tax and would cut down the income to the extent of 60 to 70 per cent, at the rates specified on cross examination and on the basis of 100 per cent of the full and true value of those securities (T. 1340).